

# MODEL INTERNATIONAL MOBILITY CONVENTION



GLOBAL POLICY INITIATIVE  
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**The Model International Mobility Convention (MIMC) identifies a better future regime for migration and mobility. It addresses and fills the sad gaps in existing international law. It displays potential coherence in a comprehensive set of rules, using language that is clear, and action-, rights- and duties-oriented.**

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## **People are as mobile as they ever were in our globalized world.**

Yet the movement of people across borders lacks global regulation, leaving many people unprotected in irregular and dire situations and some States concerned that their borders have become irrelevant. International mobility—the movement of individuals across borders for any length of time as visitors, students, tourists, labor migrants, entrepreneurs, long-term residents, forced migrants, refugees, victims of trafficking, people caught in countries in crisis and family members—has no common definition or legal framework.

A holistic approach to human mobility is needed at the international level to address these gaps in protection, regulation and cooperation. An international mobility regime should establish a system that recognizes the human dignity of all while promoting the interests of countries of origin, transit and destination.

In 213 articles divided over eight chapters, the Model International Mobility Convention (MIMC) proposes a framework for mobility with the goal of reaffirming existing rights afforded to mobile people (and the corresponding rights and responsibilities of States) and expanding those basic rights where warranted. Building on existing core legal regimes, the MIMC establishes both the minimum rights afforded to all people who cross State borders as visitors, and the special rights afforded to tourists, students, migrant workers, investors and residents, forced migrants, refugees, migrant victims of trafficking, migrants caught in countries in crisis and family members. The MIMC creates, for the first time, a holistic and cumulative framework to cover these different categories of mobile people.

The MIMC identifies a better future regime for migration and mobility. It addresses and fills the sad gaps in existing international law. It displays potential coherence in a comprehensive set of rules, using language that is clear, and action-, rights- and duties-oriented. By demonstrating what a better international mobility regime could look like, we hope to take away undue concerns, assure uneasy publics and inspire action.

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# FROM THE SECRETARIAT

The Model International Mobility Convention (MIMC) was developed by an International Mobility Commission involving over 40 eminent academic and policy experts in the fields of migration, human rights, national security, labor economics and refugee law. The Commission came together to debate and develop the MIMC in workshops conducted regularly from early 2015 through April 2017. The MIMC is the final outcome of this collaborative effort to produce a new and greatly needed international legal framework for human mobility.

Through extensive deliberation, the Commission developed a coherent and equitable Model Convention. It strikes the difficult but necessary balance between, on the one hand, the needs and demands of the increasing numbers of people who are seeking to cross international borders and, on the other hand, the interests of States in national security, domestic prosperity and sovereign control of their borders. It aims at a realistic assessment of what States can and should be willing to accept in support of their national interests in a more sustainable and humane global mobility regime.

We wish to thank our co-authors, the Commission Members who wrote the Convention, for making this project possible through their insights, drafting and support. We also wish to thank the *Columbia Journal of Transnational Law* for publishing the Convention and 12 expert commentaries in a Special Edition, the Open Society Foundations International Migration Initiative and the Endeavor Foundation for supporting our workshops, and those who have signed the MIMC and provided their support.

We invite you to endorse and support the Model International Mobility Convention by adding your signature to the Convention at [globalpolicy.columbia.edu/mobility-convention](https://globalpolicy.columbia.edu/mobility-convention).





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# SUMMARY

The following overview explains how the chapters of the Model International Mobility Convention (MIMC) build on and complement each other. This overview may be consulted in conjunction with the visualization on pages 11-12 of the rights outlined in the MIMC, which offers a breakdown of the different categories of persons covered by the MIMC alongside the rights and protections to which they are entitled.

The MIMC consists of 213 articles divided over eight chapters. These provisions spell out the rights held by a wide array of mobile people, ranging from visitors, students, tourists, migrant workers, investors and residents, forced migrants, refugees, family members, migrant victims of trafficking and migrants caught in countries in crisis. Some of these categories are—to a greater or lesser extent—covered by existing international legal regimes. However, the Model Convention for the first time brings these groups together under a single framework. In developing such a comprehensive legal regime for mobility, the MIMC fills a number of existing gaps in protection and rights, adds clarity around the corresponding responsibilities of States as well as migrants vis-à-vis States, and proposes comprehensive mechanisms for international cooperation and responsibility sharing to strengthen and reinforce the development of a truly global mobility regime.

The Preamble of the MIMC establishes the complementarity of the MIMC with existing international legal instruments. These include the United Nations Charter, the Universal Declaration of Human Rights as well as other core international human rights treaties, thereby explicitly signaling that the MIMC builds upon the rights and protections embodied in these documents. None of the provisions in the MIMC should be interpreted as undermining such rights, nor should any rights be regarded as negated by the MIMC should they not be explicitly embodied in its articles. The focus of the MIMC is with the rights and protections that are of special relevance to people on account of their moving across national borders. Accordingly, individuals enjoy these rights without prejudice to all other rights they are entitled to as persons, as embodied in the wide range of existing human rights treaties. With the aim to help the reader navigate through the MIMC and the rights it contains, a visualization of the rights outlined in the MIMC can be found on pages 11-12.

An essential feature of the MIMC is that it is cumulative. This means that, for the most part, the chapters build on and add to the set of rights afforded to categories of migrants covered by earlier chapters.

Examples of cumulative rights include:

- *Mobility*: All mobile people enjoy freedom of movement within the territory of each State Party following admission. However, the right to choose residence is not introduced until the migrant worker chapter, with reference to migrant residents.
- *Civil*: Everyone is entitled to freedom of thought, conscience and religion and the right to hold opinions, but the more expansive right to freedom of expression is not introduced until the student chapter.
- *Political*: Undocumented workers enjoy equality of treatment with regards to joining and participating in and seeking assistance of trade unions. However, only in the sections addressing documented workers is the right to form trade unions or other associations introduced.

<sup>1</sup> United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

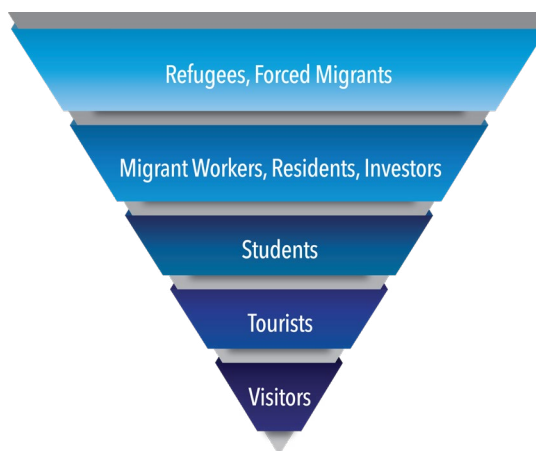
<sup>2</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A(III).



- *Social and cultural*: Undocumented workers enjoy the right to decent living conditions and protection from exploitation. However, it is not until the MIMC turns to documented migrant workers in Chapter IV that the right to equality of treatment with regards to social housing schemes is introduced. Moreover, only forced migrants and refugees enjoy the right to same treatment as foreign nationals with regards to housing.
- *Health*: All mobile people enjoy access to emergency medical healthcare, but access to non-emergency healthcare is first introduced in the migrant worker chapter, and only in the section on documented migrant workers is the right to equality of treatment with nationals with regards to access to healthcare introduced.
- *Economic*: Undocumented workers have the right to transfer earnings and savings to the State of origin, but the right to exemption from import and export duties and taxes is only introduced for documented workers and the right to equality of treatment with nationals with regards to transferring assets only applies to refugees and forced migrants.
- *Employment*: All migrant workers enjoy equality of treatment with regards to remuneration and other conditions of work and safe and secure working environments, but the right to seek alternative employment can only be claimed by documented workers, while equality of treatment with regards to right to self-employment only applies to refugees and forced migrants.
- *Protection*: Everyone has the right to access consular or diplomatic authorities but only forced migrants and refugees have the right to international protection.
- *Family reunification*: The right to family reunification of the nuclear family is introduced in the chapter on students (undocumented and temporary migrant workers are exempted), but only forced migrants and refugees enjoy the right to reunification of the extended family.

Although the various sections of the MIMC are designed to be cumulative and interlocking the various chapters, nonetheless, still focus on specific categories of mobile persons.

Following the Preamble, Chapter I on visitors articulates the minimum set of rights afforded to all mobile people, independent of their immigration status and whether they entered a State regularly or not. As chapters and new categories of migrants are subsequently introduced in the MIMC additional rights are added to this minimum base-line of rights. Thus, Chapter II specifies the rights enjoyed by tourists, which are provided in addition to those spelled out in Chapter I. Similarly, Chapter III on students builds on and adds to the rights embodied in the previous two chapters.



Chapter IV covers migrant workers, investors and residents. These provisions address the rights that can be claimed by any migrant working within the territory of any State Party, including undocumented migrants or those in an irregular situation. The chapter also outlines the additional rights that can be claimed by documented migrant workers and investors. Migrant residents have, in addition to a few specific rights related to residency, full access to the non-work-related rights enjoyed by undocumented and documented migrant workers alike.

Chapter IV moreover outlines the rights of temporary migrant workers. These provisions introduce some contextual exceptions to the otherwise cumulative nature of the rest of the MIMC: temporary workers may not have access to all the rights afforded to documented

migrant workers that have been admitted on a permanent basis. Article 98 lists the permissible modifications that can be placed on the rights of temporary workers. Importantly, however, the MIMC specifies clear time limits for the legitimate modification of these rights.

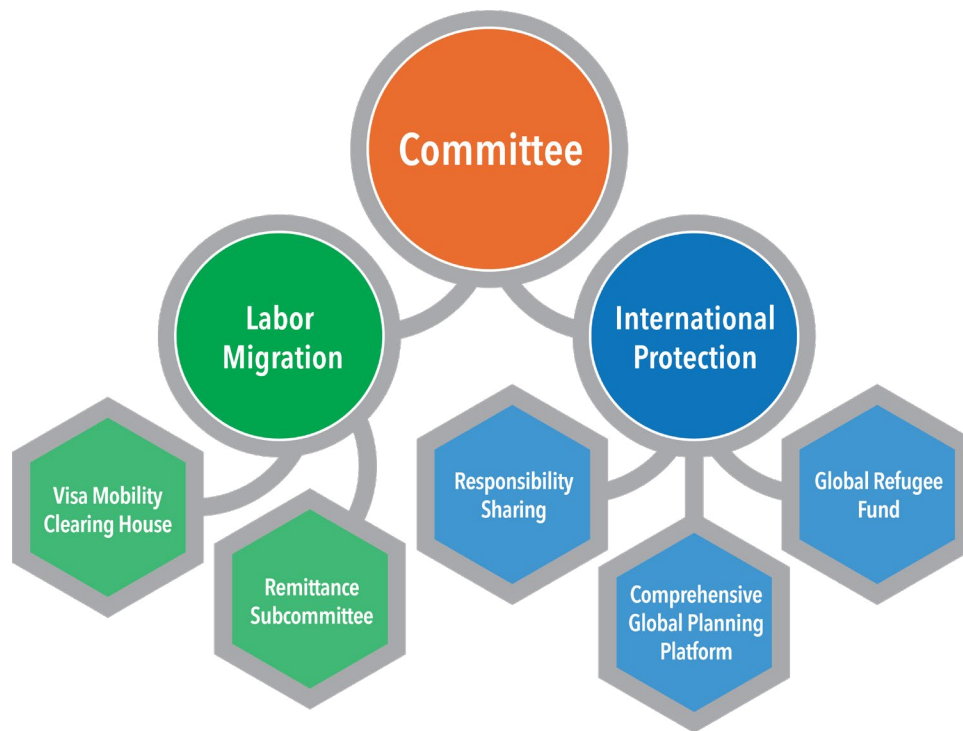
Chapter V subsequently covers the status of refugees and forced migrants and the specific rights they enjoy, and follows the logic of building on the rights set forth in earlier chapters. The chapter presents a unified approach to refugees and forced migrants and strengthens the terms of protection as compared to the existing refugee regime. Refugees and forced migrants enjoy all the rights set forth in Chapters I through III and all the non-work-related rights set forth in Chapter IV. To the extent that they engage in employment activities, they enjoy all employment related rights as well. In addition to provisions governing their general treatment by States Parties, they enjoy rights primarily related to protection and access to asylum.

The subsequent two chapters diverge from the earlier chapters of the MIMC by addressing cross-cutting issues and rights entitlements. Chapter VI addresses migrant victims of trafficking and migrants caught in countries experiencing crises. These provisions are cross-cutting in the sense that the rights embodied therein are applicable to any migrant that should find him or herself in any or both of these two scenarios. Chapter VII is similarly issue-specific and spells out the rights relating to family reunification enjoyed by different mobility categories.

Not all articles in the MIMC are represented in the overview on pages 11-12. This is because the MIMC not only contains provisions that afford rights to migrants, and to a lesser extent States (such as the right to decide who can enter and remain in their territory); it also articulates the responsibilities of migrants vis-à-vis States and the rights and responsibilities of a number of institutions that do not directly respond to a right held by migrants. Examples include the articles in Chapter II on tourists regarding the protection of the environment and those in Chapter III on students on the rights of educational institutions.

Finally, Chapter VIII introduces the Treaty Body and is dedicated to ensuring the effective implementation of the MIMC as well as providing a broader framework for facilitating global cooperation on international mobility. It includes provisions for the establishment of a Committee with the responsibility to review and monitor the application of the MIMC. This role is supported by reporting requirements for States Parties on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the MIMC and by identifying the Committee as a source of authoritative guidance on the interpretation of the MIMC. These provisions also create an institutional space for civil society, including migrants and their representative organizations, to participate fully in the independent monitoring process established by each State to promote, protect and monitor the implementation of the MIMC. The chapter moreover includes provisions relating to dispute resolution in cases when States Parties consider that another State Party is not fulfilling its obligations under the MIMC, and outlines the specific procedures and remedies that should be taken under such circumstances.

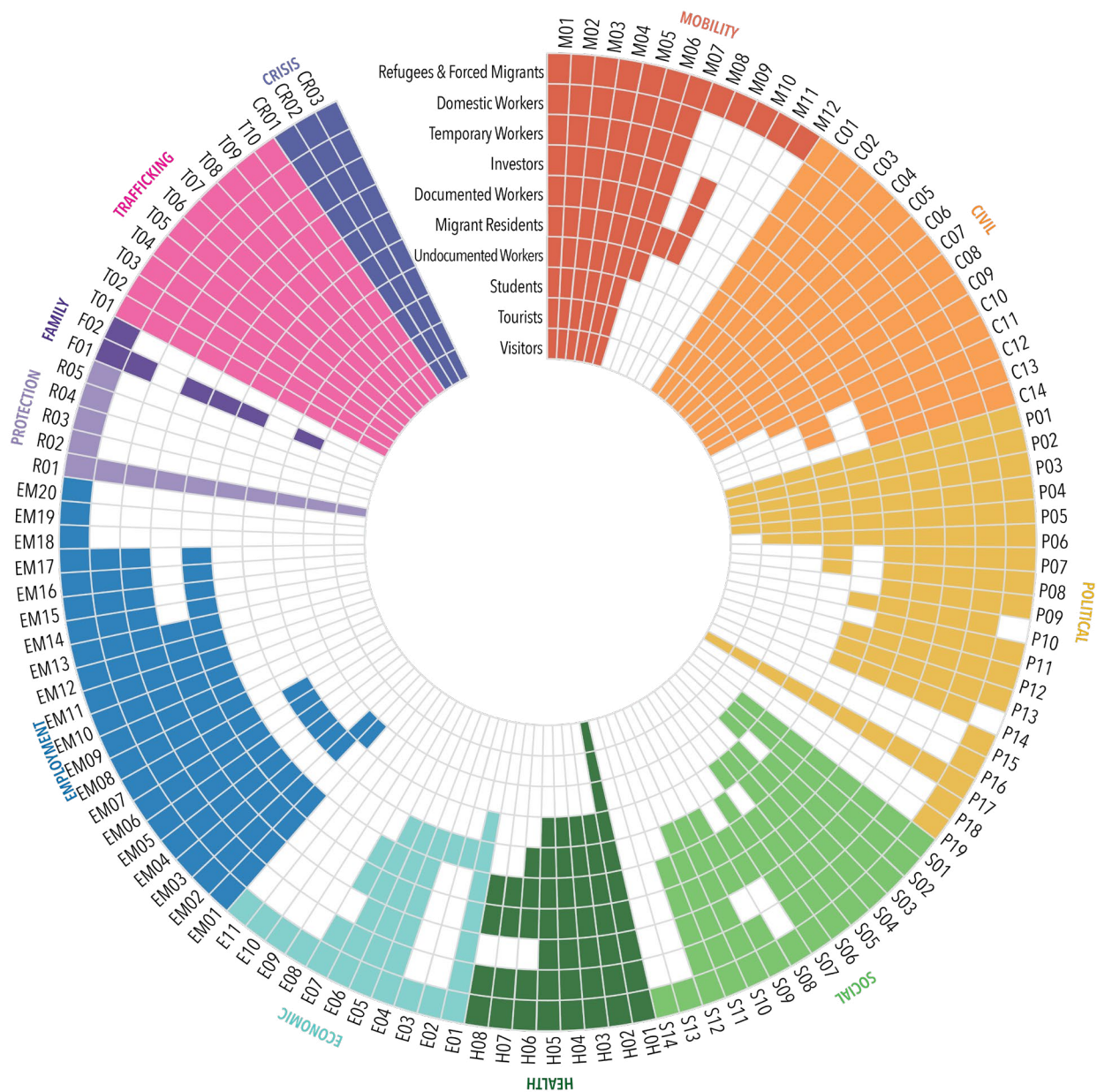
The Treaty Body chapter also proposes that the Committee establish a number of mechanisms to more comprehensively and equitably address migration flows whichever their causes might be. These mechanisms include a Mobility Visa Clearing House and a Remittance Subcommittee for facilitating international economic migration. The chapter also introduces a number of innovations for supporting and strengthening the provision of international protection, key aspects of which include a Responsibility Sharing framework, a Comprehensive Global Planning Platform and a Global Refugee Fund.



#### International Cooperation Mechanisms:

- *Visa Mobility Clearing House*: Global platform accessible by States Parties, corporations, non-governmental organizations and individuals to facilitate the safe, orderly and regular migration of individuals (participating States are asked to allocate at least 10% of all annual labor visas to refugees and forced migrants).
- *Remittance Subcommittee*: Tasked with issuing annual reports surveying the facility and costs of remittances of migrants to designated recipients and making recommendations for reducing costs and ensuring the reliable delivery of funds.
- *Responsibility Sharing*: Tasked with issuing annual reports documenting the number of recognized refugees and forced migrants, their current location of asylum and the cost-per-person of the provision of asylum. During an annual meeting involving all States Parties the "responsibility shares" of each State Party will be announced, as based on a responsibility sharing formula. Each State Party will pledge the number of resettlement visas for refugees and forced migrants and the amount of funding that it will provide in the coming year.
- *Comprehensive Global Planning Platform*: Tasked with establishing working groups to propose solutions to protracted refugee situations, with the aim of facilitating return, local integration or resettlement. In order to improve the quality of global deliberation and problem solving for migrants and refugees, the Convention establishes a research function to report and assess the flow of global visitors, refugees and migrants as well as their impacts on countries of origin, transit and destination.
- *Global Refugee Fund*: Supplements the responsibility sharing mechanism by directing funding to support the efforts of States in receiving refugees and displaced persons, resettlement programs and integration efforts, and the provision of emergency measures.

# OVERVIEW OF RIGHTS



## Using the visualization to navigate the MIMC

This visualization provides an overview of the *rights entitled* to different groups of migrants.

- *Mobility categories* are listed on the vertical axis in order of appearance in the MIMC: visitors, tourists, students, migrant workers, residents and investors, temporary and domestic workers, refugees and forced migrants.
- *Rights* are divided by type of right and are listed horizontally in order of introduction in the MIMC; mobility, civil, political, social and cultural, health-related rights, economic, employment, protection and family reunification rights.
- Each *vertical row* represents a rights-category that has been coded at the periphery of the circle ("M01", "S11", "E5"). The key can be found on page 12, where the rights and corresponding articles are listed in full.
- A *colored box* along the axis of a particular mobility category (i.e. visitor, domestic worker, refugees and forced migrants) means that the group enjoys the relevant right.
- *Article numbers* in the key indicate where in the MIMC the right can be found; note that a number of rights are given multiple articulations across the MIMC.



Tag	Description (article #)				
<b>MOBILITY</b>					
M01	Access to passports (9)	S02	with national students (41)	EM4	Right to receive understandable and enforceable employment contracts (59)
M02	Freedom to leave any state (6)	S03	Ownership rights over intellectual work (41)	EM5	Equality of treatment with nationals with regards to right to remedies in case of breach of employment contracts (59)
M03	Right at any time to enter and remain in their State of origin (6)	S04	Right to maintain cultural links with State of Origin (45)	EM6	Right to have wages paid directly to them on a regular basis and to dispose of their wages as they wish (60)
M04	Right to apply for lawful entry into any country and to be considered for the award of a visa (8)	S05	Right to decent living conditions (62)	EM7	Right to remain in the State of employment to seek a remedy for unpaid wages (60)
M05	Protection against arbitrary expulsion (12)	S06	Equality of treatment with nationals with regards to children's right to access primary education (64, 106, 172, 182)	EM8	Right not to be deprived of authorization of residence or work permit or expelled merely on the ground of failure to fulfill an obligation arising out of a work contract (75)
M06	Freedom of movement (18, 80, 100, 158)	S07	Equality of treatment with nationals with regards to children's right to access secondary education (64, 106)	EM9	Protection against termination of employment merely on the grounds of pregnancy (76)
M07	Protection against collective expulsion (70)	S08	Equality of treatment with nationals with regards to access to and participation in cultural life (85)	EM10	Right to lodge appeal against termination of employment (77, 101)
M08	Right to travel with unlimited visas to and from State of origin (72, 104)	S09	Equality of treatment with nationals with regards to social housing schemes (85)	EM11	Right to reinstatement or compensation for unjustified termination of employment (77)
M09	Freedom to choose residence (80)	S10	Equality of treatment with nationals with regards to access to educational and social services (85)	EM12	Right to seek alternative employment (78)
M10	Right not to be denied access to air, land, or sea carriers (140)	S11	Right to social inclusion of children into local school systems (87)	EM13	Right to temporary absence from State of employment (79)
M11	Access to documents for international travel (160)	S12	Right to portable pensions (106)	EM14	Equality of treatment with nationals with regards to vocational guidance, placement services and training facilities (85, 180)
M12	Right to assistance to facilitate return (177)	S13	Right to have rights attaching to marriage or other civil union previously acquired respected by States Parties (142)	EM15	Right not to lose authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of work permits or similar authorizations (91)
<b>CIVIL</b>					
C01	Non-discrimination (5, 55, 98, 133)	S14	Right to sit for qualifying exams that are relevant to their degree level (163)	EM16	Freedom to choose remunerated activity (94, 100)
C02	Right to life (14)	<b>HEALTH</b>		EM17	Equality of treatment with nationals with regards to unemployment benefits, access to public work schemes and alternative employment (95)
C03	Freedom from slavery and forced labor (15)	H01	Equality of treatment with nationals with regards to emergency medical care, including reproductive healthcare (22)	EM18	Equality of treatment with nationals with regards to right to self-employment (161)
C04	Protection against torture, or cruel, inhuman or degrading treatment or punishment (16)	H02	Access to non-emergency health care that supports public health (57)	EM19	Same treatment as foreign nationals with regards to practicing of liberal professions (163)
C05	Right to privacy (17)	H03	Right not to undergo discriminatory medical examinations (57)	EM20	Priority access to labor visas (209)
C06	Protection of property (19)	H04	Access to sexual health care services and maternity protection (63)		
C07	Freedom of thought, conscience and religion (20, 141)	H05	Children's right to access necessary medical assistance and health care (64)	<b>PROTECTION</b>	
C08	Right to hold opinions (21)	H06	Equality of treatment with regards to access to health services (85)	R01	Access to consular or diplomatic authorities (23)
C09	Right to liberty and security of person (25)	H07	Access to long-term rehabilitation services (86)	R02	Right to international protection (127)
C10	Right to respectful treatment during arrest, detention and imprisonment (26)	H08	Right to stay in the country in case of incapacity to work (86)	R03	Prohibition against expulsion or direct or indirect return to the frontiers of territories where there is a risk of serious harm (138)
C11	Freedom of expression (46)	<b>ECONOMIC</b>		R04	Right to be admitted to the territory of States pending a determination of a request of international protection (140)
C12	Right to protection against violence and exploitation in the workplace and in workers' accommodations (63)	E01	Right to transfer earnings and savings to State of Origin (60)	R05	Equality of treatment with nationals with regards to public relief and assistance (155)
C13	Prohibition against exploitative child labor (64)	E02	Right to rent or purchase property and sell or lease property (72)		
C14	Non-discrimination based on skill (98)	E03	Right to retain bank accounts in country of origin (72)	<b>FAMILY REUNIFICATION</b>	
<b>POLITICAL</b>		E04	Equality of treatment with nationals with regards to access to banks and other financial institutions (85)	F01	Right to nuclear family reunification (Ch. VII)
P01	Protection of documents (11, 75)	E05	Right to exemption from import and export duties and taxes (88)	F02	Right to extended family reunification (Ch. VII)
P02	Right to recognition as a person before the law (24)	E06	Equality of treatment with nationals with regards to taxes, duties and charges (89, 151)	<b>TRAFFICKING</b>	
P03	Children have the right to a name, to registration of birth and to a nationality (24)	E07	Equality of treatment with nationals with regards to social security (90)	T01	Right to confidential legal proceedings (181)
P04	Right to equality before the law (27)	E08	Equality of treatment with nationals with regards to the acquisition of movable and immovable property (143)	T02	Access to measures for physical, psychological and social recovery (181)
P05	Right not to be imprisoned merely on the ground of failure to fulfill a contractual or visa obligation (28)	E09	Equality of treatment with nationals with regards to protection of industrial and intellectual property (144)	T03	Access to appropriate housing (181)
P06	Right to receive objective, honest and timely information (30, 41, 59, 67, 74, 79, 159)	E10	Equality of treatment with nationals with regards to rationing and public relief (147, 148)	T04	Access to counseling and information (181)
P07	Equality of treatment with nationals with regards to joining and participating in and seeking assistance of trade unions (61)	E11	Equality of treatment with nationals with regards to transfer of assets (152)	T05	Access to medical, psychological and material assistance (181)
P08	Right to report and seek legal remedy for harassment at work (63)	<b>EMPLOYMENT</b>		T06	Access to employment, educational and training opportunities (181)
P09	Right not to be deprived of authorization of residence or work permit or expelled merely on the ground of pregnancy (76)	EM1	Right to engage in employment activities (41, 105, 174)	T07	Protection against detention (181)
P10	Right to form political associations (81, 99, 145)	EM2	Equality of treatment with nationals with regards to minimum age of employment (58)	T08	Access to measures that offer possibility of obtaining compensation for damage suffered (181)
P11	Right to form trade unions (81)	EM3	Equality of treatment with nationals with regards to remuneration and other conditions of work and safe and secure working environments (58)	T09	Right of children migrant victims of trafficking to a legal guardian to represent their interests (182)
P12	Right to be considered eligible to apply for regular permanent residence after a specified period of time (83, 155)			T10	Right to protection from victimization (191)
P13	Right to permanent residence after a specified period of employment or residence (83)			<b>CRISIS</b>	
P14	Right to citizenship after a specified period of legal residence in the country not exceeding ten years (84)			CR1	Right to internal relocation (187)
P15	Exemption from exceptional measures (134)			CR2	Access to valid identity and travel documents (188)
P16	Exemption from reciprocity (136)			CR3	Access to emergency temporary protection (190)
P17	Children's right not to be detained solely on the basis of the migratory or residence status or of being unaccompanied or separated (137)				
P18	Right to identity papers (150)				
P19	Right to a resident permit valid for at least three years and renewable (157)				
<b>SOCIAL</b>					
S01	Full rights of access to educational facilities on par				

# PREAMBLE

## The States Parties to the present Convention,<sup>1</sup>

Reaffirming the purposes and principles of the Charter of the United Nations and of the Universal Declaration of Human Rights and re-calling the core international human rights treaties;<sup>2</sup>

Protecting the human rights of all refugees and migrants, regardless of status and demonstrating full respect for international law and international human rights law and, where applicable, international refugee law and international humanitarian law;<sup>3</sup>

Reasserting the existing rights afforded to mobile people and corresponding rights and responsibilities of States established by international and regional conventions and initiatives, including the Refugee Convention of 1951 and its 1967 Protocol and, for its States Parties, the Migrant Workers Convention;

Expanding those basic rights of mobile people where warranted in order to address the growing gaps in protection and responsibility that are leaving people vulnerable;

Recognizing that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone, including persons moving across national borders, may enjoy economic, social, cultural, civil, and political rights in the appropriate locale;<sup>4</sup>

Recognizing that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory response to the protection needs of forced migrants and refugees is international in scope and nature cannot therefore be achieved without international cooperation;<sup>5</sup>

Expressing the wish that all States, recognizing the social and humanitarian nature of international protection, continue to receive persons in need of protection in their territories and that they act in concert in a true spirit of international cooperation in order that forced migrants and refugees may find asylum and the possibility of resettlement;<sup>6</sup>

Envisaging, as do the Sustainable Development Goals (2030 Agenda), a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination;<sup>7</sup>

<sup>1</sup> This model treaty borrows the conceptual framework suggested by Rey Koslowski for a "General Agreement on Migration, Mobility and Security" from his edited volume *Global Mobility Regimes* (Palgrave Macmillan, 2011) and draws on Joel Trachtman's "Illustrative Draft General Agreement on Labor Migration," pp. 347-361 in his *The International Law of Economic Migration: Toward the Fourth Freedom* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2009). The full list of Commission members and other selected public signatories who have signed onto the Convention can be found at: [www.globalpolicy.columbia.edu/mobility-convention](http://www.globalpolicy.columbia.edu/mobility-convention).

<sup>2</sup> U.N. Charter; G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

<sup>3</sup> G.A. Res. 71/1, ¶ 5 (Sept. 19, 2016) (modified by author) (citations in this Article using the phrase "modified by author" reflect the fact that the author has modified or has rewritten the language of pre-existing provisions) [hereinafter *New York Declaration for Refugees and Migrants*]; see International Migrants Bill of Rights, 28 GEO. IMMIGR. L.J. 395, Preamble (2010) (modified by author) [hereinafter *International Migrants Bill of Rights*].

<sup>4</sup> G.A. Res. 71/1, supra note 3, ¶ 5 (modified by author); *International Migrants Bill of Rights*, supra note 3, Preamble.

<sup>5</sup> United Nations Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 [hereinafter 1951 Refugee Convention], preamble (modified by author).

<sup>6</sup> *Id.*

<sup>7</sup> G.A. Res. 70/1, ¶ 8 (Sept. 25, 2015).



Recognizing, as also do the Sustainable Development Goals,<sup>8</sup> the positive contribution of migrants for inclusive growth and sustainable development; including that international migration is a multi-dimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses, cooperating internationally to facilitate safe, orderly, regular and responsible migration;<sup>9</sup>

Committing to strengthen the resilience of communities hosting refugees, particularly in developing countries;<sup>10</sup>

Underlining the right of migrants to return to their State of citizenship; and recalling that States must ensure that their returning nationals are duly received;<sup>11</sup>

Realizing the importance and extent of the mobility of persons phenomenon, which involves millions of individuals and affects all States in the international community;<sup>12</sup>

Recognizing the legitimate interest of States in controlling their borders and that the exercise of sovereignty entails responsibility, including in the adoption of appropriate and comprehensive policies governing the movement of persons;<sup>13</sup>

Recognizing that persons outside their state jurisdiction have special needs that may require special accommodation in certain regards;<sup>14</sup>

Convinced, therefore, of the need to bring about the international protection of the rights of all persons moving across borders and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally;<sup>15</sup>

Mindful that the legitimate claims persons moving across borders can make, and the responsibilities they should bear, should reflect the particular circumstances and reasons for their movement and aware that States have consequent rights and duties both toward those mobile persons and other States;

And, highlighting the particular circumstances and cumulative sets of rights of visitors, tourists, students, migrant workers, investors and residents, family reunification, migrant victims of human trafficking, forced migrants and refugees;

## Have agreed as follows:

<sup>8</sup> *Id.* ¶ 29.

<sup>9</sup> François Crépeau, *A new agenda for facilitating human mobility after the UN summits on refugees and migrants*, OPENDEMOCRACY (Mar. 24, 2017), <https://www.opendemocracy.net/beyondslavery/safepassages/fran-ois-cr-peau/new-agenda-for-facilitating-human-mobility-after-un-summits-on-refugee>, [https://perma.cc/M6TF-9WUS].

<sup>10</sup> G.A. Res. 70/1, *supra* note 7, ¶ 29.

<sup>11</sup> G.A. Res. 68/4, ¶ 24 (Oct. 3, 2013); see G.A. Res. 70/1, *supra* note 7, ¶ 29.

<sup>12</sup> G.A. Res. 45/158, preamble (Dec. 18, 1990); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families preamble, Dec. 18, 1990, 2220 U.N.T.S. 3 (modified by author) [hereinafter MW].

<sup>13</sup> *International Migrants Bill of Rights*, *supra* note 3, preamble.

<sup>14</sup> *Id.*

<sup>15</sup> G.A. Res. 45/158, *supra* note 12, preamble. MW, *supra* note 12, preamble (modified by author).

# Visitors<sup>16</sup>

ch. 1.

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# 01

## Scope and Definitions

### Article 1

For the purposes of the present Convention:

1. The term “visitor” refers to a person who is outside his or her State of origin, temporarily residing or in transit in a State of which he or she is not a national and does not qualify under one of the chapters that follow for another status.
2. The rights of the visitor enumerated herein shall apply to all those persons who qualify for additional protections as a tourist, student, migrant worker, investor or resident, reunifying family member, mi-grant victim of human trafficking, migrant caught in a crisis, forced migrant or refugee.
3. The present Convention shall apply during the entire migration process, which comprises preparation for migration, departure, transit and the entire period of stay and/or remunerated activity in the State of destination or employment as well as return to the State of origin.
4. The “member of family” includes spouses, dependent children and any dependent adults,<sup>17</sup> and any other members of the family as defined in Chapter VII of the present Convention.
5. For the purposes of the protections provided in this Convention, “child”, “children” or “minor” shall mean any person below the age of eighteen years, unless under the law applicable by States Parties to the child majority is attained earlier.<sup>18</sup>

### Article 2<sup>19</sup>

For the purposes of the present Convention, visitors and members of their families:

1. Are considered as documented or in a regular situation if they are authorized to enter and to stay for a period of time in the host State pursuant to the law of that State and to international agreements to which that State is a party.
2. Are considered as non-documented or in an irregular situation if they do not meet with the conditions provided for in paragraph 1 of the present article.

### Article 3<sup>20</sup>

For the purposes of the present Convention:

1. The term “State of origin” means the State of which the person concerned is a national or habitual resident.
2. The term “host State” means a State where the visitor is visiting or plans to visit.
3. The term “State of transit” means any State through which the person concerned passes on any journey from the State of origin or the State of habitual residence to the host State or from the host State to the State of origin or habitual residence.

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<sup>16</sup>The first three chapters of the model treaty draw on the excellent research assistance of Doron Shiffer Sebba, Yuichi Kawamoto and Steven Nam and reflect many of the suggestions made by Rey Koslowski, Randall Hansen, T. Alexander Aleinikoff, Joel Trachtman, Sarah Rosengaertner, Justin MacDermott, Alicia Evangelides and Maggie Powers.

<sup>17</sup>G.A. Res. 45/158, *supra* note 12, art. 4; MW, *supra* note 12, art. 4 (modified by author).

<sup>18</sup>Convention on the Rights of the Child, art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3 (modified by author).

<sup>19</sup>G.A. Res. 45/158, *supra* note 12, art. 5; MW, *supra* note 12, art. 5 (modified by author).

<sup>20</sup>G.A. Res. 45/158, *supra* note 12, art. 6; MW, *supra* note 12, art. 6 (modified by author).

**Article 4****Rights Granted Apart from this Convention**

1. This Convention shall be without prejudice to the rights granted to migrants and refugees under existing human rights instruments of international law. Nothing in this Convention shall be deemed to impair any rights and benefits granted by States Parties in bilateral, regional or global multilateral treaties to migrants and refugees apart from this Convention.
2. Nothing in the present Convention should be construed to limit States Parties from granting additional rights and privileges to migrants and refugees who seek entry, transit or are resident in their jurisdictions.

**Article 5<sup>21</sup>****Non-Discrimination**

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all visitors within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, gender, race, color, language, religion or conviction, sexual orientation, disability, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status (including documented or undocumented, unless otherwise prescribed in the present Convention).

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# 02

## Mobility Rights

**Article 6<sup>22</sup>****Freedom to Leave and Enter States**

1. All persons shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order, public health or the rights and freedoms of others and are consistent with the other rights recognized in this Convention.
2. Persons shall have the right at any time to enter and remain in their State of origin.

**Article 7****Right of States to Determine Who Can Enter and Stay**

States Parties have the right to determine who shall be allowed to enter their territories and to decide who shall be allowed to stay, subject to the constraints outlined in article 6 above, other provisions of this Convention and in particular the non-refoulement provisions of Chapter V below and any other treaties—bilateral, regional and multilateral—the States may have entered into.

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<sup>21</sup> G.A. Res. 45/158, *supra* note 12, art. 7; MW, *supra* note 12, art. 7 (modified by author).

<sup>22</sup> G.A. Res. 45/158, *supra* note 12, art. 8; MW, *supra* note 12, art. 8 (modified by author).

## Article 8

### Visas

1. Consular officers of States Parties may issue visas that authorize nationals of other States to travel and present themselves for inspection by state officials at designated border crossing points and ports of entry. States Parties may also permit nationals of other States to present themselves for inspection without having applied for and received a visa. The granting of visa-free travel is a prerogative of all States Parties and States Parties have full discretion regarding which States' nationals need visas and which do not.
2. Nationals of States Parties from whom visas are required for entry have the right to apply for lawful entry to any country and to be considered for the award of a visa in accordance with article 5 of the present Convention.<sup>23</sup>
3. Distinctions in the regulation of admission and exclusion are permissible only where the distinction is made pursuant to a legitimate aim, the distinction has an objective justification, and reasonable proportionality exists between the means employed and the aims sought to be realized.<sup>24</sup>

## Article 9

### General Provisions

1. Visitors will abide by the laws of the host State, carry a passport for identification and remain as visitors no longer than their visa or other permission to enter allows, unless they qualify for special exemption based on a valid claim under Chapter V below.<sup>25</sup>
2. States of origin will take no measures that restrict the return of nationals and take measures to facilitate the return of their nationals.

## Article 10

### Documentation and Border Control

1. States Parties will issue passports to their nationals at their request, once they provide the appropriate documentation and at a reasonable cost. Any costs greater than production costs shall reflect public purposes and shall be nondiscriminatory among similarly circumstanced applicants.<sup>26</sup>
2. States Parties, having rights and responsibilities to manage and control their borders, will promote international cooperation on border control and management as an important element of security for States, including battling transnational organized crime, terrorism and illicit trade. This also includes: ensuring that public officials and law enforcement officers who work in border areas are trained to uphold the human rights of all persons crossing, or seeking to cross, international borders; strengthening international border management cooperation, including in relation to training and the exchange of best practices; and intensifying support to help to build capacity as appropriate.<sup>27</sup>
3. States Parties shall endeavor to provide machine readable, biometric passports to facilitate identification of their nationals.<sup>28</sup> States requiring such passports for entrance shall assist other States in making the technology affordable.

<sup>23</sup> G.A. Res. 71/1, *supra* note 3, ¶ 33.

<sup>24</sup> *International Migrants Bill of Rights*, *supra* note 3, art. 2(2).

<sup>25</sup> Italian Ministry of Tourism, Charter of Rights for Tourists 11, Law No. 135, art. 4 (2001), [http://www.foromez.it/sites/default/files/Carta\\_diritti\\_turista\\_en\\_def.pdf](http://www.foromez.it/sites/default/files/Carta_diritti_turista_en_def.pdf), [https://perma.cc/2425-FLCP].

<sup>26</sup> Convention on International Civil Aviation, Dec. 7, 1944, 15 U.N.T.S. 295; Int'l Civil Aviation Org. [ICAO], *Annex 9: Facilitation*, at 3-2 (12th ed. 2005), <http://www.ifrc.org/docs/IDRL/Chicago%20Convention%20Annex%209.pdf>, [https://perma.cc/GZ5F-B4YL].

<sup>27</sup> G.A. Res. 71/1, *supra* note 3, ¶ 24 (modified by author).

<sup>28</sup> ICAO, *Machine Readable Travel Documents Part 4: Specifications for Machine Readable Passports (MRPs) and other TD3 Size MRTDs*, ICAO Doc. 9303 (7th ed. 2015), [https://www.icao.int/publications/Documents/9303\\_p1\\_cons\\_en.pdf](https://www.icao.int/publications/Documents/9303_p1_cons_en.pdf), [https://perma.cc/9JYS-8F6X]. ICAO, *supra* note 26, at 3-1.

**Article 11<sup>29</sup>****Protection of Documents**

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to, or documents authorizing stay, residence or establishment in the national territory. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a visitor.

**Article 12<sup>30</sup>****Denial of Entry**

1. Nothing in this Convention shall restrict a State Party's right to decide the number of visas it issues at its discretion.
2. States Parties can deny entry to any particular prospective visitor when acting in accordance with article 7 above. In this connection, host and transit state officials at ports of entry and authorized border crossing points have discretion to deny entry to a prospective visitor regardless of whether that individual holds a valid entry or transit visa.

**Article 13****Protection against Arbitrary Expulsion**

1. Visitors may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law and provided they do not qualify for international protection under Chapter V below.
2. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.
3. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.
4. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.
5. In case of proposed expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims and other entitlements due to him or her and any pending liabilities.
6. In case of expulsion of a visitor the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own international travel costs.

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<sup>29</sup> G.A. Res. 45/158, *supra* note 12, art. 21; MW, *supra* note 12, art. 21 (modified by author).

<sup>30</sup> G.A. Res. 45/158, *supra* note 12, art. 22; MW, *supra* note 12, art. 22 (modified by author).



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# 03

## Rights of All Visitors

### Article 14

#### Right to Life

Every visitor has an inherent right to life that shall be protected by law. No visitor may be arbitrarily deprived of life.<sup>31</sup>

### Article 15<sup>32</sup>

#### Freedom from Slavery and Forced Labor

1. No visitor shall be held in slavery or servitude.
2. No visitor shall be required to perform forced or compulsory labor.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term “forced or compulsory labor” shall not include:
  - (a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;
  - (b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community.

### Article 16<sup>33</sup>

#### Protection against Torture or Cruel, Inhuman or Degrading Treatment or Punishment

No visitor shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### Article 17<sup>34</sup>

#### Right to Privacy

No visitor shall be subjected to arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications, or to unlawful attacks on his or her reputation. Each visitor shall have the right to the equal protection of the law against such interference or attacks.

### Article 18<sup>35</sup>

#### Freedom of Movement

Visitors with permission to enter a country are free to travel in that country on the same basis as nationals of that country without restrictions other than those required by national security,

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<sup>31</sup> G.A. Res. 45/158, *supra* note 12, art. 9; MW, *supra* note 12, art. 9 (modified by author).

<sup>32</sup> G.A. Res. 45/158, *supra* note 12, art. 11; MW, *supra* note 12, art. 11 (modified by author).

<sup>33</sup> G.A. Res. 45/158, *supra* note 12, art. 10; MW, *supra* note 12, art. 10 (modified by author).

<sup>34</sup> G.A. Res. 45/158, *supra* note 12, art. 14; MW, *supra* note 12, art. 14 (modified by author).

<sup>35</sup> Youth on the Move: An Initiative to Unleash the Potential of Young People to Achieve Smart, Sustainable and Inclusive Growth in the European Union, at 10, COM (2010) 477 final (Sept. 15, 2010).

public health or the rights and freedoms of others.

#### **Article 19<sup>36</sup>**

##### **Protection of Property**

No visitor shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the host State, the assets of a visitor are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

#### **Article 20<sup>37</sup>**

##### **Freedom of Thought, Conscience and Religion**

1. Visitors shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.
2. Visitors shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public order, health or the fundamental rights and freedoms of others.
4. States Parties to the present Convention undertake to have respect for the liberty of parents, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions, within the confines of the law of the hosting State.

#### **Article 21<sup>38</sup>**

##### **Right to Hold Opinions**

Visitors shall have the right to hold opinions without interference.

#### **Article 22<sup>39</sup>**

##### **Medical Care**

Visitors shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care, including reproductive healthcare, shall not be refused to them but payment for such care may be limited to terms that are reciprocal with the State of origin of the visitor or as otherwise arranged through special medical insurance by the visitor.

#### **Article 23<sup>40</sup>**

##### **Access to Consular or Diplomatic Authorities**

Visitors and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of proposed expulsion, the person concerned

<sup>35</sup> Youth on the Move: An Initiative to Unleash the Potential of Young People to Achieve Smart, Sustainable and Inclusive Growth in the European Union, at 10, COM (2010) 477 final (Sept. 15, 2010).

<sup>36</sup> G.A. Res. 45/158, *supra* note 12, art. 15; MW, *supra* note 12, art. 15 (modified by author).

<sup>37</sup> G.A. Res. 45/158, *supra* note 12, art. 12; MW, *supra* note 12, art. 12 (modified by author).

<sup>38</sup> G.A. Res. 45/158, *supra* note 12, art. 13; MW, *supra* note 12, art. 13 (modified by author).

<sup>39</sup> G.A. Res. 45/158, *supra* note 12, art. 28; MW, *supra* note 12, art. 28 (modified by author).

<sup>40</sup> G.A. Res. 45/158, *supra* note 12, art. 23; MW, *supra* note 12, art. 23 (modified by author).

shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

#### Article 24<sup>41</sup>

##### Right to Recognition as a Person Before the Law

1. Every visitor shall have the right to recognition everywhere as a person before the law.
2. Each child of a visitor, including those born in transit or host States,<sup>42</sup> shall have the right to a name, to registration of birth and to a nationality.<sup>43</sup>
3. Each State Party shall provide in its national law for its nationality to be acquired by children born on its territory who do not have or are not able to exercise a right to acquire at birth another nationality.<sup>44</sup>

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## 04 Criminal Proceedings

#### Article 25<sup>45</sup>

##### Right to Liberty and Security of Person

1. Visitors shall have the right to liberty and security of person.
2. Visitors shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.
3. Any verification by law enforcement officials of the identity of visitors shall be carried out in accordance with procedure established by law.
4. Visitors shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.
5. Visitors who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
6. Visitors who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgment.
7. When a visitor is arrested or committed to prison or custody pending trial or is detained in any other manner:

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<sup>40</sup> G.A. Res. 45/158, *supra* note 12, art. 23; MW, *supra* note 12, art. 23 (modified by author).

<sup>41</sup> G.A. Res. 45/158, *supra* note 12, art. 24; MW, *supra* note 12, art. 24 (modified by author).

<sup>42</sup> Int'l Labour Org. [ILO], ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, at 26 (2006), [https://www.unicef.org/socialpolicy/files/The\\_ILO\\_multilateral\\_framework\\_on\\_labour\\_migration.pdf](https://www.unicef.org/socialpolicy/files/The_ILO_multilateral_framework_on_labour_migration.pdf), [<https://perma.cc/Y2QF-6SXG>].

<sup>43</sup> G.A. Res. 45/158, *supra* note 12, art. 29; MW, *supra* note 12, art. 29 (modified by author); G.A. Res. 70/1, Sustainable Development Goals, at Goal 16.9 (Sept. 25, 2015).

<sup>44</sup> European Convention on Nationality, art. 6.2, Nov. 6, 1997, E.T.S. No. 166 (modified by author).

<sup>45</sup> G.A. Res. 45/158, *supra* note 12, art. 16; MW, *supra* note 12, art. 16 (modified by author).

- (a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;
  - (b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;
  - (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.
8. Visitors who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.
  9. Visitors who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

#### **Article 26<sup>46</sup>**

##### **Treatment During Arrest, Detention and Imprisonment**

1. Visitors who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
2. Detained visitors shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
3. Children who are detained shall be separated from adults (other than their parents) and be accorded treatment appropriate to their age and legal status.
4. Visitors who are subjected to any form of detention or imprisonment in accordance with the law in force in the host State or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.
5. If a visitor is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

#### **Article 27<sup>47</sup>**

##### **Right to Equality Before the Law**

1. Visitors shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Visitors who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
3. In the determination of any criminal charge against them, visitors and members of their families shall be entitled to the following minimum guarantees:
  - (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;
  - (b) To have adequate time and facilities for the preparation of their defense and to

<sup>46</sup> G.A. Res. 45/158, *supra* note 12, art. 17; MW, *supra* note 12, art. 17 (modified by author).

<sup>47</sup> G.A. Res. 45/158, *supra* note 12, art. 18; MW, *supra* note 12, art. 18 (modified by author); HHCH Proposal by the Government of Brazil on a Draft Convention on cooperation and access to justice for international tourists, January 2015. <https://assets.hch.net/docs/74b12153-45a4-45fa-a86e-814fa5bf9d2a.pdf>, [<https://perma.cc/8QBA-X54B>].

- communicate with counsel of their own choosing;
- (c) To be tried without undue delay;
  - (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;
  - (e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
  - (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
  - (g) Not to be compelled to testify against themselves or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
  5. Visitors convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.
  6. When a visitor has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.
  7. No visitor shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

#### **Article 28<sup>48</sup>**

##### **Principle of Legality**

1. No visitor shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.
2. Humanitarian considerations related to the status of a visitor, in particular with respect to his or her temporary status, should be taken into account in imposing a sentence for a criminal offence committed by a visitor.
3. No visitor shall be imprisoned merely on the ground of failure to fulfill a contractual or visa obligation.<sup>49</sup>

<sup>48</sup> G.A. Res. 45/158, *supra* note 12, art. 19; MW, *supra* note 12, art. 19 (modified by author).

<sup>49</sup> G.A. Res. 45/158, *supra* note 12, art. 20; MW, *supra* note 12, art. 20 (modified by author).

# Tourists

ch. 11



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# 01

## Scope and Definitions

### Article 29

For the purposes of the present Convention:

1. The term “tourists” refers to persons who visit a country for the purposes of entertainment, relaxation and cultural appreciation and in order to explore the cultural and or natural resources of the host State.
2. In addition to the rights and duties listed below in Chapter II, tourists and members of their families have all the rights and duties of visitors as prescribed in Chapter I.
3. Tourists must secure visas for travel when required to do so, and respect the terms and conditions of those visas, including leaving the host country before those visas expire.<sup>50</sup>
4. The term “tourism professionals” refers to persons, natural or judicial, who sell, provide, furnish, contract for, arrange, or advertise that they can or may arrange, or have arranged, wholesale or retail, travel services catered to tourists.<sup>51</sup>
5. Host States shall take all appropriate legislative and administrative measures to ensure that state agents, tourists and tourism professionals comply with the principles and responsibilities set forth in the present Chapter through appropriate legislative, administrative, social and educational measures, except as otherwise required hereafter.

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# 02

## Rights of Tourists

### Article 30

#### General Provisions

1. Tourists have a right to receive and States Parties have a duty to ensure that tourism professionals provide tourists with objective and honest information on their places of destination and on the conditions of travel, hospitality and stays.<sup>52</sup>
2. Tourists have a right to receive and tourism professionals should ensure that the contractual clauses proposed to their customers are readily understandable as to the nature, price and quality of the services they commit themselves to providing and the financial compensation payable by them in the event of a unilateral breach of contract on their part.<sup>53</sup>
3. Tourism professionals, insofar as it depends on them, should show concern, in cooperation with the public authorities, for the security and safety, accident prevention, health protection and food safety of those who seek to visit for the purposes of tourism.<sup>54</sup>

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<sup>50</sup> Italian Ministry of Tourism, *supra* note 25, at 11 (modified by author).

<sup>51</sup> CAL. BUS. & PROF. CODE §17550.1 (West 2007) (modified by author).

<sup>52</sup> U.N. World Tourism Org. Res. 406 (XIII), art. 6(1) (Oct. 1, 1999) [hereinafter CGET] (modified by author).

<sup>53</sup> *Id.* art. 6(1) (modified by author).

<sup>54</sup> *Id.* art. 6(2) (modified by author).

**Article 31<sup>55</sup>****Prohibition against Sex Tourism**

1. The exploitation of human beings in any form, particularly sexual, especially of children, conflicts with fundamental human rights and the aims of legitimate tourism; as such, in accordance with international law, tourists should neither engage in nor encourage such activity. States, both hosts and origins of tourists, should energetically combat and penalize it.
2. Each State Party shall ensure that all acts of prostitution of children are offences under its criminal law.

**Article 32****Responsibilities of Sea Borne Facilities**

For the purposes of the rights and responsibilities of tourists, cruise ships and other sea borne facilities are subject to all the commitments undertaken by their State of registration and/or ownership, including all the relevant provisions in the present Convention, in particular:

1. Before embarkation and during the voyage, tourists have a right to timely information on the status of the ship and its itinerary and to disembark a docked ship, if essential provisions such as food, water, restroom facilities and access to medical care cannot adequately be provided onboard, subject only to the Master of the ship's concern for passenger safety and security and customs and immigration requirements of the port.<sup>56</sup>
2. Tourists have a right to transportation to the ship's scheduled port of disembarkation or the passenger's home city and a full refund for a trip that is canceled due to mechanical failures, or a partial refund for voyages that are terminated early due to those failures.<sup>57</sup>
3. Tourists have a right to have available on board ships operating beyond rivers or coastal waters full-time, professional emergency medical attention, as needed until shore side medical care becomes available<sup>58</sup>

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# 03

## Protecting the Environment

**Article 33<sup>59</sup>****Sustainable Environment**

All stakeholders in tourism development—tourists, tourism professionals and host States in particular—should safeguard the natural environment with a view to achieving sound, continuous and sustainable economic growth, satisfying equitably the needs and aspirations of present and future generations.

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<sup>55</sup> *Id.* art. 2(3) (modified by author).

<sup>56</sup> Cruise Line Int'l Ass'n, *Cruise Industry Passenger Bill of Rights*, art. 1 (modified by author) (May 22, 2013).

<sup>57</sup> *Id.* art. 7 (modified by author).

<sup>58</sup> *Id.* art. 3 (modified by author).

<sup>59</sup> CGET, *supra* note 52, art. 3(1) (modified by author).

**Article 34<sup>60</sup>****Preservation of Natural Resources**

All forms of tourism development that are conducive to saving rare and precious resources, in particular water and energy, as well as avoiding waste production so far as possible, should be given priority and encouraged by national, regional and local public authorities.

**Article 35<sup>61</sup>****Ecosystems and Biodiversity**

Tourism infrastructure should be designed and tourism activities programmed in such a way as to protect the natural heritage composed of ecosystems and biodiversity and to preserve endangered species of wildlife; the stakeholders in tourism development, and especially professionals, should agree to the imposition of limitations or constraints on their activities when these are exercised in particularly sensitive areas: desert, polar or high mountain regions, coastal areas, tropical forests or wetlands, propitious to the creation of nature reserves or protected areas.

**Article 36<sup>62</sup>****Vulnerable Areas**

Special attention should be paid to the specific problems of coastal areas and island territories and to vulnerable rural or mountain regions, for which tourism often represents a rare opportunity for development in the face of the decline of traditional economic activities.

**Article 37<sup>63</sup>****Impact Evaluation**

Tourism professionals, particularly investors, governed by the regulations laid down by the public authorities, should carry out studies of the impact of their development projects on the environment and natural surroundings; they should also deliver, with the greatest transparency and objectivity, information on their future programs and their foreseeable repercussions and foster dialogue on their contents with the populations concerned.

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<sup>60</sup> *Id.* art. 3(2) (modified by author).

<sup>61</sup> *Id.* art. 3(4) (modified by author).

<sup>62</sup> *Id.* art. 5(3) (modified by author).

<sup>63</sup> *Id.* art. 5(4) (modified by author).

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# 04

## Respecting Local Cultural Traditions

### Article 38<sup>64</sup>

#### Natural and Cultural Resources

While natural resources belong to the common heritage of mankind, the communities in whose territories they are situated have particular rights and obligations to them. States should require that tourists respect those particular rights and do nothing to prevent the realization of the obligations host communities have toward protecting those natural and cultural resources, in particular:

1. Tourism policies and activities should be conducted with respect for artistic, archaeological and cultural heritage, which they should protect and pass on to future generations; particular care should be devoted to preserving and upgrading monuments, shrines and museums as well as archaeological and historic sites, which should, as far as safety and preservation permits, be widely open to tourist visits;
2. Encouragement should be given to public access to privately-owned cultural property and monuments, with respect for the rights of their owners, as well as to religious buildings, without prejudice to normal needs of worship;
3. Financial resources derived from visits to cultural sites and monuments should, at least in part, be used for the upkeep, safeguard, development and embellishment of this heritage.

### Article 39<sup>65</sup>

#### Local Culture and Economy

Tourism activity should be planned in such a way as to allow traditional cultural products, crafts and folklore to survive and flourish, rather than causing them to degenerate and become standardized. Local populations should be given the opportunity to become associated with tourism activities and share equitably in the economic, social and cultural benefits they generate, and particularly in the enjoyment of direct and indirect jobs resulting from them. Tourism policies should be applied in such a way as to help to raise the standard of living of the populations of the regions visited and meet their needs. And the planning and architectural approach to and operation of tourism resorts and accommodation should aim to integrate them, to the extent possible, in the local economic and social fabric; where skills are equal, priority should be given to local manpower.

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<sup>64</sup> *Id.* art. 4 (modified by author).

<sup>65</sup> *Id.* arts. 4.4, 5.1, 5.2 (modified by author).



# Students

ch. 11.1

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# 01

## Scope and Definitions

### Article 40

#### For the purposes of the present Convention:

1. The term “international student” refers to any person engaging in learning at an educational institution outside of his or her State of citizenship.<sup>66</sup>
2. The term “educational institution” refers to any institution or entity certifying, facilitating the enrollment of and providing learning opportunities to international students or scholars.<sup>67</sup> A “host institution” is an educational institution within the host State at which an international student engages in learning.
3. The term “home institution” refers to an educational institution in the State of origin with which an international student remains registered before, during or after the period in which he or she engages in learning at the host institution.
4. International students have all the rights and responsibilities of visitors as specified under Chapter I (and of tourists, as under Chapter II, if they engage in tourism). They may have rights in addition to the ones described below as a function of membership in a regional association or in accord with bilateral treaties.
5. Host States and States of origin shall take all appropriate legislative and administrative measures to ensure the rights set forth in the present Chapter and to encourage, and oblige where appropriate, all educational institutions to respect and comply with the responsibilities set forth in the present Chapter, keeping in mind the obligations set forth in Article 5.

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<sup>66</sup> Am. Ass'n of Collegiate Registrars & Admissions Officers, Bill of Rights and Responsibilities for International Students and Institutions, definitions (1996) [hereinafter AACRAO] (modified by author).

<sup>67</sup> *Id.*



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# 02

## Rights of International Students and Responsibilities of Educational Institutions

### Article 41

#### Rights of International Students

Host States should ensure that educational institutions respect the rights of international students herein, in particular:

1. To know who the provider of educational services is and of the provider's major affiliations; to a clear explanation from the institution to which they are applying of the admissions process and documentation necessary to complete their admissions dossiers, of the academic course offerings and the approximate time normally required to complete an intended program from the institution to which they are applying, of a clear and accurate account of all costs for the academic year or a reasonable estimation of the full cost of their educational program, including a clear and detailed explanation of the costs associated with the services of placement agencies or other third parties in the admissions process that are readily distinguishable from the standard costs associated with a course of study at the intended institution;<sup>68</sup>
2. To have full rights of access to the educational facilities of the host institution on par with national students enrolled in similar degree programs at a similar stage of preparation.<sup>69</sup> This includes rights to temporary employment if such employment is a required part of the degree, such as research assistants or assistant teaching;
3. To have ownership rights over their intellectual works unless the works are subject to specific published institutional policies to the contrary or ownership rights are relinquished by the students;<sup>70</sup>
4. To know what personal information is collected about them by an educational institution, why it is being collected and how they may review their files and correct any errors, to have assurance that personal information about them may be used only by those persons with a legitimate right to know, and to have assurance that the education institution has developed, instituted and maintained security procedures to insure the integrity of their files.<sup>71</sup>

### Article 42

#### Services and Information

International students have the right to services and information that support their unique needs as international students and educational institutions have a responsibility to provide such services, in particular:

1. To receive counseling on immigration regulations, cultural adjustment, orientation to the

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<sup>68</sup> *Id.* art. I. §§1-4, IV (modified by author).

<sup>69</sup> Erasmus+, *Erasmus Student Charter*, art. II (modified by author) (2014).

<sup>70</sup> AACRAO, *supra* note 66, art. I §11 (modified by author).

<sup>71</sup> *Id.* arts. I. §5, IV. §5 (modified by author).

- host institution, and information on insurance and taxes;<sup>72</sup>
2. To have their language abilities assessed to determine if their skills are sufficient to enable them to benefit from the host institution's academic course offerings;<sup>73</sup>
  3. To receive a clear and complete explanation of all legal requirements governing their enrollment, including how to maintain their student status;<sup>74</sup>
  4. To have their application for admission and their prior learning experiences evaluated by admissions officers and/or credential evaluators trained to evaluate international applications and learning.<sup>75</sup>

### **Article 43**

#### **Transparency**

International students have the right to a clear explanation from their home institution of whether, or the extent to which, course work at their host institution may be transferable to their program of study at their home institution.<sup>76</sup>

### **Article 44**

#### **Degrees and Credentials**

1. Educational institutions will award relevant degrees and credentials on the basis of academic performance as promised to the international student on enrollment.
2. Educational institutions will return the tuition payment, in whole or in part, if they fail to provide the educational services promised at the time of enrollment.

### **Article 45**

#### **Cultural Identity**

1. States Parties shall ensure the respect of the cultural identity of students and shall not prevent them from maintaining their cultural links with their State of origin.
2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

### **Article 46<sup>77</sup>**

#### **Freedom of Expression**

1. International students and accompanying members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.
2. The only allowable restrictions to this right are those which are equally applicable to nationals, are provided by law and are necessary.

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<sup>72</sup> *Id.* arts. I, §8, IV, §8 (modified by author).

<sup>73</sup> *Id.* arts. I, §9, IV, §9 (modified by author).

<sup>74</sup> *Id.* arts. I, §10, IV, §10 (modified by author).

<sup>75</sup> *Id.* art. IV, §6 (modified by author).

<sup>76</sup> *Id.* arts. I, §, IV, §7 (modified by author).

<sup>77</sup> G.A. Res. 45/158, *supra* note 12, art. 13 (modified by author).

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# 03

## Responsibilities of International Students

### Article 47 Information

International students shall provide accurate information in their representations to educational institutions, government entities and others in the international education community. International students shall abide by the host institutions' honor systems. Fraud or misrepresentation of achievements are valid reason for expulsion from the institution.<sup>78</sup>

### Article 48 Intellectual Property

International students shall recognize, honor and properly attribute the intellectual property of others.<sup>79</sup>

### Article 49 Rules and Regulations

International students shall in addition to adhering to the laws of the host State abide by the rules and regulations of the host institution.<sup>80</sup>

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# 04

## Rights of Educational Institutions

### Article 50 Criteria and Deadlines

1. Educational institutions have the right to establish appropriate admissions criteria and deadlines consistent with their educational programs,<sup>81</sup> as well as appropriate and realistic deadlines for completion of the international student's program.<sup>82</sup>
2. States parties, acting in accordance with national laws, shall encourage the relevant public authorities to permit universities and other institutions of higher learning to consider the protection of refugees and forced migrants from persecution as a criterion for admission and financial assistance for international students.

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<sup>78</sup> AACRAO, *supra* note 66, art. II(1) (modified by author) (1996).

<sup>79</sup> *Id.* art. II. §2 (modified by author).

<sup>80</sup> *Id.* art. II. §3 (modified by author).

<sup>81</sup> *Id.* art. III. §1 (modified by author).

<sup>82</sup> *Id.* art. III. §2 (modified by author).

**Article 51****Fraud or Lack of Achievement**

Educational institutions have the right to deny admission or continuing enrollment if evidence proves fraud or lack of achievement by any student, including international students.<sup>83</sup>

**Article 52****Placement Agencies**

Educational institutions have the right to be informed if an international student is being assisted in admission by a placement agency or other third party.<sup>84</sup>

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<sup>83</sup> *Id.* art. III. §3 (modified by author).

<sup>84</sup> *Id.* art. III. §4 (modified by author).

# Migrant Workers, Investors and Residents<sup>85</sup>

ch. IV

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# 01

## Scope and Definitions

### Article 53<sup>86</sup>

For the purposes of the present Convention:

1. The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.
2. The term “migrant resident” refers to a person who maintains a residence for at least a year, relies upon an independent source of income and is not employed.<sup>87</sup>
3. The term “migrant entrepreneur” or “migrant investor” refers to an individual who creates or provides a substantial (and specified in national law) investment in a business or related corporate entity.
4. The term “temporary migrant worker” refers to a migrant worker whose permission to work and reside in a State of employment is limited in time and who does not fall under any of the other definitions under the present article.
5. Other migrant workers include:
  - (a) The term “migrant domestic worker” refers to a migrant worker who in the State of employment is engaged in work performed in or for a household or households within an employment relationship;<sup>88</sup>
  - (b) The term “frontier migrant worker” refers to a migrant worker who retains his or her habitual residence in a neighboring State to which he or she normally returns every day or at least once a week;
  - (c) The term “seasonal migrant worker” refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;
  - (d) The term “migrant seafarer”, which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national or on a vessel owned and operated by nationals of another State;
  - (e) The term “migrant worker on an offshore installation” refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;
  - (f) The term “itinerant migrant worker” refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;
  - (g) The term “project-tied migrant worker” refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

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<sup>85</sup> This chapter has benefited from the research and drafting of Emma Borgnäs and Kelsey Clark, from Daniel Naujok’s and Diego Acosta’s comments, from the advice of Austin Fra-gomen on investor migration, and from Donald Kerwin, Randall Hansen, and Joel Tracht-man’s “Illustrative Draft General Agreement on Labor Migration”—while continuing to draw most of its provisions from International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MW, *supra* note 12).

<sup>86</sup> G.A. Res. 45/158, *supra* note 12, art. 2 (modified by author).

<sup>87</sup> Directive 2003/109, of the European Council of 25 November 2003 Concerning the Status of Third-country Nationals who are Long-term Residents, 2003 O.J. (L 16) (modified by author).

<sup>88</sup> Int’l Labour Org. [ILO], Convention (No. 189) Concerning Decent Work for Domestic Workers, art. 1(a), Jun. 16, 2011, Registration No. 51379 [hereinafter Domestic Workers Con-vention] (modified by author).

- (h) The term “specified-employment migrant worker” refers to a migrant worker:
  - i. Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
  - ii. Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
  - iii. Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work.
- 6. Migrant workers, investors and residents have all the rights and responsibilities of visitors as specified under Chapter I and of tourists, as under Chapter II, if they engage in tourism and of students, as under Chapter III, if they engage in learning at an educational institution in the host State. They may have rights in addition to the ones described below in accord with bilateral treaties.

#### **Article 54<sup>89</sup>**

The present Chapter shall not apply to:

1. Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, and whose admission and status are regulated by general international law or by specific international agreements or conventions;
2. Persons sent or employed by a State or on its behalf outside its territory who participate in development programs and other cooperation programs, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;
3. Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

#### **Article 55<sup>90</sup>**

For the purposes of the present Convention, the term “State of employment” means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be. The term “State of long term residence” means a State where the migrant resident has established a permanent abode.

<sup>89</sup> G.A. Res. 45/158, *supra* note 12, art. 3; MW, *supra* note 12, art. 3 (modified by author).

<sup>90</sup> G.A. Res. 45/158, *supra* note 12, art. 6; MW, *supra* note 12, art. 6 (modified by author).



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# 02

## Rights of All Migrant Workers, including Undocumented or Irregular Workers, and Members of their Families

### Article 56<sup>91</sup>

#### Non-Discrimination

All migrant workers without prejudice to skill level shall enjoy the rights articulated in this Part II of the present Convention, keeping in mind the obligations set forth in article 5 of this Convention.

### Article 57<sup>92</sup>

#### Access to Health Care

1. Migrant workers and members of their families shall not be refused emergency medical care, including reproductive health care.<sup>93</sup>
2. States Parties shall adopt measures to ensure that migrant workers and members of their families are provided with access to non-emergency health care that supports public health, such as immunization programs and treatment of communicable diseases.<sup>94</sup>
3. Migrant workers and members of their families shall not be required to undergo discriminatory medical examinations,<sup>95</sup> including HIV or pregnancy testing.<sup>96</sup>

### Article 58<sup>97</sup>

#### Equality of Treatment

1. States of employment shall ensure that migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the State of employment in respect of remuneration and:
  - (a) Other conditions of work and safe and secure working environments,<sup>98</sup> including, overtime, hours of work, weekly rest, holidays with pay, safety, health, employer-provided healthcare, termination of the employment relationship, protection against dismissal and any other conditions of work, which, according to national law and practice, are covered by these terms;
  - (b) Other terms of employment, that is to say, minimum age of employment, restriction on work and any other matters which, according to national law and practice, are considered a term of employment.
2. It shall not be lawful to derogate in private contracts of employment from the principle of

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<sup>91</sup> G.A. Res. 45/158, *supra* note 12, art. 7; MW, *supra* note 12, art. 7 (modified by author).

<sup>92</sup> G.A. Res. 45/158, *supra* note 12, art. 28; MW, *supra* note 12, art. 28 (modified by author).

<sup>93</sup> ILO R202, *Social Protection Floors Recommendation*, art. 5(a) (modified by author) (June 19, 2012).

<sup>94</sup> See generally Matthew Lister, *Justice and Temporary Labor Migration*, 29 *Geo. IMMIGR. L.J.* 95, 114 (2014).

<sup>95</sup> ILO, *The Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* 24 (Int'l Labour Office ed., 2006) [hereinafter *ILO Multilateral Framework*] (modified by author).

<sup>96</sup> ILO R201, *Domestic Workers Convention*, *supra* note 88; ILO, *Domestic Workers Recommendation* art. 3(c) (June 16, 2011).

<sup>97</sup> G.A. Res. 45/158, *supra* note 12, art. 25; MW, 1990, art. 25 (modified by author).

<sup>98</sup> Rep. of the Open Working Group of the Gen. Assembly on Sustainable Development Goals on the Work of Its Sixty-Eighth Session, at 16, U.N. Doc. A/68/970 (2014) [hereinafter U.N. Doc. A/68/970].

equality of treatment referred to in paragraph 1 of the present article.

## Article 59

### Employment Contracts and Conditions of Employment

1. States of employment shall ensure that migrant workers shall have the right to receive understandable and enforceable employment contracts.<sup>99</sup>
2. Migrant workers shall be informed in a language they understand of the nature of the position they have been offered, their actual working and living conditions and the terms and conditions of employment.<sup>100</sup>
3. States Parties shall promote the establishment of written employment contracts that accurately reflect their working conditions and remuneration in order to serve as the basis for determining obligations and responsibilities of employers and a mechanism for the registration of such contracts where this is necessary for the protection of migrant workers.<sup>101</sup>
4. States of employment shall provide for effective remedies to all migrant workers for any breach of employment contracts on the same basis as available to national workers.<sup>102</sup>

## Article 60

### Remuneration

1. States Parties shall implement measures such that migrant workers shall have the right to have their wages paid directly to them on a regular basis, to dispose of their wages as they wish, and that all their wages are paid upon the termination of employment, in accordance with national law and practice.<sup>103</sup>
2. Migrant workers shall have the right during and upon the termination of their stay in the State of employment to transfer their earnings and savings, in particular those funds necessary for the support of their families, and their personal effects and belongings to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.<sup>104</sup> States Parties shall take appropriate measures to facilitate such transfers.<sup>105</sup>
3. Migrant workers who leave the State of employment are entitled to any outstanding remuneration and benefits which may be due in respect of employment and as applicable are given a reasonable period of time to remain in the State of employment to seek a remedy for unpaid wages.<sup>106</sup>

## Article 61<sup>107</sup>

### Participation in Trade Unions

1. States Parties recognize the right of migrant workers and members of their families

<sup>98</sup> Rep. of the Open Working Group of the Gen. Assembly on Sustainable Development Goals on the Work of Its Sixty-Eighth Session, at 16, U.N. Doc. A/68/970 (2014) [hereinafter U.N. Doc. A/68/970].

<sup>99</sup> ILO Multilateral Framework, *supra* note 95, at 25, guideline 13.3 (modified by author).

<sup>100</sup> *Id.* at 25, guideline 13.4 (modified by author); Domestic Workers Convention, *supra* note 88, art. 7 (modified by author).

<sup>101</sup> ILO Multilateral Framework, *supra* note 95, at 19, guideline 10.3 (modified by author).

<sup>102</sup> *Id.* at 20, guideline 10.5 (modified by author).

<sup>103</sup> *Id.* at 18, guideline 9.11 (modified by author).

<sup>104</sup> G.A. Res. 45/158, *supra* note 12, arts. 32, 47.1. MW, *supra* note 12, arts. 47.1, 32 (modified by author); G.A. Res. 68/4, Declaration of the High-level Dialogue on International Migration and Development (Oct. 3, 2013), <http://undocs.org/A/RES/68/4>, [https://perma.cc/JN2G-YYAJ]; U.N. Dept. of Econ. and Soc. Affairs, Addis Ababa Action Agenda of the Third International Conference on Financing for

Development (Aug. 10, 2015), [http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA\\_Outcome.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf), [https://perma.cc/J8C5-637D] (modified by author).

<sup>105</sup> G.A. Res. 45/158, *supra* note 12, art. 47(2); MW, *supra* note 12, art. 47(2) (modified by author).

<sup>106</sup> ILO Multilateral Framework, *supra* note 95, at 18, guideline 9(5) (modified by author).

<sup>107</sup> G.A. Res. 45/158, *supra* note 12, art. 26; MW, *supra* note 12, art. 26 (modified by author).

under the same conditions as national workers:

- (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;
  - (b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;
  - (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.
2. No restrictions may be placed on the exercise of these rights other than those that are in place for nationals and that are prescribed by law and which are necessary in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

## Article 62

### Decent Living Conditions

States Parties shall take adequate measures to ensure access to decent living conditions for all migrant workers and members of their families.<sup>108</sup>

## Article 63

### Protection and Rights of Women

1. States Parties recognize the specific vulnerabilities of women migrant workers and shall take appropriate measures to:
  - (a) Protect women against violence and exploitation, and address the particular problems and abuses women face in the migration process, in the workplace and in workers' accommodations. Such abuses include, but are not limited to, rape, sexual exploitation and harassment, trafficking, and other forms of gender-based violence and discrimination.<sup>109</sup>
  - (b) Allow migrant workers to report harassment and discrimination at work, including seeking a legal remedy and assist women to seek redress.<sup>110</sup>
2. All women migrant workers shall receive appropriate emergency healthcare, including access to sexual and reproductive health services<sup>111</sup> and maternity protection.<sup>112</sup>
3. States Parties undertake to strive to provide equality of wages and work conditions for men and women.<sup>113</sup>

## Article 64

### Protection and Rights of Children

1. Each child of a migrant worker, including those born in the State of Employment countries,<sup>114</sup> shall have the basic right of access to necessary medical assistance and health care with an emphasis on primary health care. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.<sup>115</sup>

<sup>108</sup> Ass'n of Se. Asian Nations [ASEAN], *Declaration on the Protection and Promotion of the Rights of Migrant Workers*, art. 8 (Jan. 13, 2007), <http://www.asean.org/wp-content/uploads/images/archive/23062.pdf>, [https://perma.cc/5EKG-3GQT]; see also G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, arts. 7(a)(ii), 11 (Dec. 16, 1966) [hereinafter ICESCR] (modified by author).

<sup>109</sup> ILO, *Gender Sensitivity in Labour Migration-Related Agreements and MOUs* (Apr. 7, 2016).

<sup>110</sup> *Id.* at 6.

<sup>111</sup> *Id.*

<sup>112</sup> ILO, *Working Conditions Laws Report 2012* (Feb. 6, 2014), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_235155.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_235155.pdf), [https://perma.cc/P5XU-KW2U].

<sup>113</sup> *Gender Sensitivity in Labour Migration-Related Agreements and MOUs*, *supra* note 109 (modified by author); see also ICESCR, *supra* note 108, art. 7(a) (modified by author).

<sup>114</sup> ILO Multilateral Framework, *supra* note 95, at 28, guideline 14.11 (modified by author).

<sup>115</sup> Convention on the Rights of the Child, art. 24, Nov. 20, 1989, 1577 U.N.T.S. 3 (modified by author).

2. Each child of a migrant worker, including those born in the State of Employment countries,<sup>116</sup> shall have the basic right of access to primary and secondary education on the basis of equality of treatment with nationals of the State concerned.<sup>117</sup>
3. States Parties shall ensure the respect of the minimum age for admission to employment,<sup>118</sup> and shall take immediate and effective measures<sup>119</sup> to prohibit and eliminate exploitative child labor, including trafficking and forced labor of migrant children and children of migrant workers<sup>120</sup> as a matter of urgency.<sup>121</sup>

## Article 65

### Protection Against Abuse

1. States Parties shall adopt, implement and enforce legislation and policies to assist and protect migrant workers from abusive practices, including physical or sexual harassment or violence, restriction of movement outside the law, debt bondage, forced labor, trafficking, withholding, underpayment or delayed payment of wages and benefits, retention of passports or identity or travel documents and threat of denunciation to authorities, particularly migrant workers in an irregular situation or other groups of migrant workers, including women, children and domestic workers who are particularly vulnerable to such abuses.<sup>122</sup>
2. States Parties shall adopt measures to encourage migrant workers and trafficking victims to denounce abuse, exploitation and violation of their rights, taking account of the special circumstances of women and children,<sup>123</sup> including by establishing mechanisms for migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation.<sup>124</sup>
3. States Parties should adopt measures to provide temporary or permanent protection to victims of trafficking or other serious forms of exploitation, on terms provided for in Chapter VII of the present Convention. Such protection should not be conditional on the victim's agreement to cooperate with law enforcement agencies.<sup>125</sup>

## Article 66<sup>126</sup>

### Political Rights in State of Origin

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States Parties shall, as appropriate and in accordance with their legislation, take measures to facilitate the exercise of these rights by documented migrant workers.

<sup>116</sup> ILO Multilateral Framework, *supra* note 95, at 28, guideline 14.11 (modified by author).

<sup>117</sup> G.A. Res. 45/158, *supra* note 12, art. 30 (modified by author).

<sup>118</sup> ILO, *Minimum Age Convention* (Jun. 26, 1973), [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C138), [https://perma.cc/C4X4-696E]; G.A. Res. 45/158, *supra* note 12, art. 25(1)(b) (modified by author). MW, *supra* note 12, art 25.1(b) (modified by author).

<sup>119</sup> ILO, *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (Jun. 17, 1999) [hereinafter *Worst Forms of Child Labour Convention*], [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182), [https://perma.cc/XWR3-29X5].

<sup>120</sup> ILO Multilateral Framework, *supra* note 95, at 15, guideline 8.4 (modified by author).

<sup>121</sup> *Worst Forms of Child Labour Convention*, *supra* note 119, art. 1.

<sup>122</sup> ILO Multilateral Framework, *supra* note 95, at 22, guideline 11.2 (modified by author).

<sup>123</sup> *Id.* at 22, guideline 11.5 (modified by author).

<sup>124</sup> *Id.* at 20, guideline 10.5 (modified by author).

<sup>125</sup> U.N. Secretary-General, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, ¶ 94, U.N. Doc. A/70/59 (Apr. 21, 2016).

<sup>126</sup> G.A. Res. 45/158, *supra* note 12, art. 41 (modified by author).

**Article 67**<sup>127</sup>**Information**

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:
  - (a) Their rights arising out of the present Convention;
  - (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.
2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall cooperate with other States concerned.
3. The above information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

**Article 68**<sup>128</sup>**Obligations**

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

**Article 69**<sup>129</sup>**Regularization**

1. Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are undocumented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in Part V below of this Chapter in the present Convention.
2. States Parties should consider, as they deem appropriate, granting an autonomous residence permit or other authorization offering a right to stay for family connections, compassionate, humanitarian or other reasons to a non-national staying irregularly on their territory.<sup>130</sup>

**Article 70**<sup>131</sup>**Protection Against Expulsion**

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.
2. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

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<sup>127</sup> *Id.* art. 33 (modified by author).

<sup>128</sup> MWC, 1990, Article 33 as modified.

<sup>129</sup> MWC, 1990, Article 34 as modified.

<sup>130</sup> MWC, 1990, Article 35 as modified.

<sup>131</sup> EU Returns Directive 2008/115 Art. 6(4)

<sup>132</sup> MWC, 1990, Article 22 as modified.

3. Expulsion from the State of residence or employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages (for migrant workers) and other entitlements due to him or her.
4. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of family ties, humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.<sup>132</sup>

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# 03

## Rights of Migrant Residents and Members of their Families

### Article 71<sup>133</sup>

#### Scope

1. Migrant residents and members of their families in an undocumented or irregular migrant resident condition in the State of residence shall enjoy the relevant rights set forth in Part II of the present Convention.
2. Migrant residents and members of their families in a documented or regular migrant resident condition in the State of residence shall in addition to the relevant non-work related rights set forth in Part II also enjoy the rights set forth here in Part III. They also enjoy those additional rights specified for migrant residents in Part IV below.

### Article 72

#### Provisions Applicable Only to Migrant Residents

1. Migrant residents have the right to rent or purchase property and sell or lease their property provided they maintain a status of residence for at least half of every year they claim residence.
2. Migrant residents may retain bank accounts in their State of origin and travel with unlimited visas to and from their State of origin.

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<sup>132</sup> G.A. Res. 45/158, *supra* note 12, art. 56; MW, *supra* note 12, art. 56 (modified by author). See also JOEL P. TRACHTMAN, THE INTERNATIONAL LAW OF ECONOMIC MIGRATION: TOWARD THE FOURTH FREEDOM 347 (2009); Council Directive 2008/115, *supra* note 130, art. 5. See TRACHTMAN, *op. cit.*, art. 15.

<sup>133</sup> G.A. Res. 45/158, *supra* note 96, art. 36; MW, *supra* note 12, art. 36.

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# 04

## Additional Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation

### Article 73<sup>134</sup>

#### Scope

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in Part II. And those who are admitted on a permanent basis obtain additional rights as specified below.

### Article 74<sup>135</sup>

#### Information

Before their departure, or at the latest at the time of their admission to the State of residence or employment, migrant residents, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

### Article 75<sup>136</sup>

#### Protection of Status

1. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfill an obligation arising out of a work contract unless fulfillment of that obligation constitutes a condition for such authorization or permit.
2. In addition to the protections afforded in article 11 in the present Convention, it shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy work permits.<sup>137</sup>

### Article 76

#### Protection during Pregnancy

1. Employers shall not be allowed to terminate the employment of a woman merely on the grounds of pregnancy, unless it is determined that her work is prejudicial to the health of the mother or the child, or being pregnant while engaged in the employment risks the safety of those relying on her.
2. Subject to article 77 of the present Convention, no migrant worker or member of his or

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<sup>134</sup> G.A. Res. 45/158, *supra* note 96, art. 36; MW, *supra* note 12, art. 36.

<sup>135</sup> G.A. Res. 45/158, *supra* note 96, art. 37; MW, *supra* note 12, art. 37.

<sup>136</sup> G.A. Res. 45/158, *supra* note 96, art. 20; MW, *supra* note 12, art. 20 (modified by author).

<sup>137</sup> G.A. Res. 45/158, *supra* note 96, art. 21; MW, *supra* note 12, art. 21 (modified by author).

her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of pregnancy.

#### **Article 77<sup>138</sup>**

##### **Protection Against Termination of Employment**

1. Migrant workers shall be allowed to lodge an appeal against the termination of his or her employment, under such procedures as may be available, and should be allowed sufficient time as determined by national authorities in light of the type of employment to obtain a final decision thereon.
2. If it is established that the termination of employment was not justified, the migrant worker should be entitled, on the same terms as national workers, to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination, or to access to a new job with a right to indemnification. If he or she is not reinstated, migrant workers shall be allowed sufficient time to find alternative employment.

#### **Article 78**

##### **Right to Seek Alternative Employment**

1. Migrant workers who, through no fault of their own, have lost their employment shall be allowed sufficient time (at least three months) to find alternative employment.<sup>139</sup>
2. Migrant workers shall be allowed sufficient time to find alternative employment if he or she files a valid complaint against an employer,<sup>140</sup> in particular when such complaints pertain to cases of abuse, including those specified in article 63 through 65 of the present Convention.

#### **Article 79<sup>141</sup>**

##### **Right to Temporary Absence**

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin, and their interests in maintaining social and cultural ties.<sup>142</sup>
2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

#### **Article 80<sup>143</sup>**

##### **Freedom of Movement**

1. Migrant workers, migrant residents and members of their families shall have the right to liberty of movement in the territory of the State of residence or employment and freedom to choose their residence there.
2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others and

<sup>138</sup> ILO Recommendation concerning Migrant Workers (R151), art. 32(2) (1975).

<sup>139</sup> ILO Multilateral Framework, *supra* note 95, guideline 9.4 (modified by author).

<sup>140</sup> Philip Martin, Towards Effective Temporary Worker Programs: Issues and Challenges in Industrial Countries, 89 INT'L MIGRATION PAPERS 35, 36 (2007).

<sup>141</sup> G.A. Res. 45/158, *supra* note 12, art. 38; MW, *supra* note 12, art. 38.

<sup>142</sup> ILO Multilateral Framework, *supra* note 95, guideline 12.9 (modified by author).

<sup>143</sup> G.A. Res. 45/158, *supra* note 12, art. 39; MW, *supra* note 12, art. 39.



are consistent with the other rights recognized in the present Convention.

#### **Article 81<sup>144</sup>**

##### **Right to Form Associations**

1. Migrant workers, migrant residents and members of their families shall have the right to form associations and (for workers) trade unions in the State of residence or employment for the promotion and protection of their economic, social, cultural and other interests.
2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (*ordre public*) or the protection of the rights and freedoms of others.

#### **Article 82<sup>145</sup>**

##### **Coordination, Participation and Representation**

1. States Parties in both States of origin and States of employment should consider establishing participatory inter-agency mechanisms that allow for the consideration of migration in a variety of policy sectors and that promote institutional and policy coherence for migration.<sup>146</sup>
2. States of employment should facilitate, in accordance with their national legislation, the consultation or participation of migrant workers, migrant residents and members of their families in decisions concerning the life and administration of the local communities in which they reside.
3. States Parties should promote the integration of the specific concerns of men and women migrant workers in collective bargaining processes and social dialogue as performed by employers and workers' organizations.<sup>147</sup>
4. States Parties should work with the social partners and migrant worker associations to ensure, including through the appointment of ombudspersons, better representation and participation of migrant workers, migrant residents and members of their families in economic, social and political life.<sup>148</sup>

#### **Article 83**

##### **Permanent Residence Status**

1. Migrant workers, investors and residents shall be eligible to apply for regular permanent residence after a specified period of time not exceeding five years.<sup>149</sup>
2. After seven years States of employment or residence must offer permanent residence to migrant workers, investors and residents who have met all the conditions of their residency and/or employment together with all applicable laws of the State of employment or residence.

#### **Article 84**

##### **Path to Citizenship**

1. The State of residence or employment shall, in the exercise of its sovereignty, grant migrant workers, migrant residents, and members of their families a path to citizenship

<sup>144</sup> G.A. Res. 45/158, *supra* note 12, art. 40; MW, *supra* note 12, art. 40.

<sup>145</sup> G.A. Res. 45/158, *supra* note 12, art. 42; MW, *supra* note 12, art. 42.

<sup>146</sup> Global Knowledge Partnership on Migration and Development, Operationalizing a Dashboard of Indicators for Measuring Policy and Institutional Coherence for Migration and Development, OECD Development Ctr., Indicators 1.18, 1.19 (June 2015), <https://www.oecd.org/dev/migration-development/Agenda%20-%20Expert%20meeting%20on%20dashboard%20of%20PICMD%20indicators.pdf>, [<https://perma.cc/4PCF-S9KM>] (modified by author).

<sup>147</sup> ILO Multilateral Framework, *supra* note 95, at 19, guideline 9.14 (modified by author).

<sup>148</sup> *Id.* at 28, guideline 14.6 (modified by author).

<sup>149</sup> Matthew Lister, *Justice and Temporary Labor Migration*, 29 GEO. IMMIGR. L. REV. 95, 122 (2014).

- after a specified period of legal residence in the country,<sup>150</sup> in accordance with national laws.<sup>151</sup>
2. States shall offer citizenship to migrant workers, migrant residents and members of their families subject to the rules and requirements relating to naturalization applied in that State, after a specified period of legal residence in the country not exceeding ten years.<sup>152</sup>
  3. States should consider granting migrant workers, migrant residents and members of their families the possibility to possess multiple nationalities.<sup>153</sup>
  4. Neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.<sup>154</sup>

### Article 85<sup>155</sup>

#### Equality of Treatment

1. Migrant workers, migrant residents and members of their families shall enjoy equality of treatment with nationals of the State of residence or employment in accordance with national laws and no later than five years after admission.<sup>156</sup> For migrant workers, this applies in relation to:
  - (a) Access to vocational guidance and placement services;
  - (b) Access to vocational training and retraining facilities and institutions;
  - (c) Access to housing, including social housing schemes, and protection against exploitation in respect of rents.

For migrant residents and migrant workers, this applies in relation to:

  - (d) Access to educational institutions and services subject to admission requirements and other regulations of the institutions and services concerned;
  - (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;
  - (f) Access to banks and other financial institutions,<sup>157</sup> subject to the rules and regulations of the institutions and services concerned;
  - (g) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;
  - (h) Access to and participation in cultural life.
2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant residents and migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of residence or employment, meet the appropriate requirements.
3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. A State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

<sup>150</sup> G.A. Res. 45/158, *supra* note 12, art. 42(3); MW, *supra* note 12, art. 42(3).

<sup>151</sup> ILO Multilateral Framework, *supra* note 95, at 28, guideline 14.13 (modified by author).

<sup>152</sup> European Convention on Nationality, Council of Europe, art. 6(3), Nov. 6, 1997, 166 E.T.S. 4 (modified by author).

<sup>153</sup> *Id.* at preamble (modified by author).

<sup>154</sup> *Id.* art. 4(d) (modified by author).

<sup>155</sup> G.A. Res. 45/158, *supra* note 12, art. 43; MW, *supra* note 12, art. 43 (modified by author).

<sup>156</sup> Council Directive 2003/109, *supra* note 87, art. 11 (concerning the status of third-country national who are long-term residents).

<sup>157</sup> Martin, *supra* note 140, at 58.

## Article 86

### Access to Health Care

1. States Parties shall adopt measures to ensure that migrant workers, migrant residents and members of their families receive, following a set period if there is one, the same treatment as nationals with regard to the provision of medical care.<sup>158</sup>
2. States Parties in which insurance is tied to employment shall require employers to provide migrant workers access to that coverage on the same basis as nationals.<sup>159</sup>
3. States Parties should ensure that migrant workers who are injured on the job are provided with long-term rehabilitation services, if needed.<sup>160</sup>
4. States Parties undertake to adopt measures to ensure that migrant workers admitted on a permanent basis are allowed to stay in the country in case of incapacity to work.<sup>161</sup>

## Article 87

### Children's Right to Education

1. States of employment or residence shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the social inclusion of children of migrant workers and residents in the local school system, particularly in respect of teaching them the local language.
2. States of employment or residence shall take no measures to discourage for the children of migrants the teaching of their mother tongue and culture.
3. States of employment or residence may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

## Article 88<sup>162</sup>

### Exemptions on Import and Export Duties and Taxes

Migrant workers, migrant residents and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

- (a) Upon departure from the State of origin or State of habitual residence;
- (b) Upon initial admission to the State of employment or residence;
- (c) Upon final departure from the State of employment or residence;
- (d) Upon final return to the State of origin or other State of habitual residence.

## Article 89<sup>163</sup>

### Taxes, Duties and Charges

1. Without prejudice to applicable double taxation agreements, migrant workers, migrant residents and members of their families shall, in the matter of earnings in the State of employment or residence:
  - (a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

<sup>158</sup> ILO Multilateral Framework, *supra* note 95, at 18, guideline 9.10 (modified by author).

<sup>159</sup> Lister, *supra* note 94, at 114 n. 65.

<sup>160</sup> *Id.*

<sup>161</sup> ILO Multilateral Framework, *supra* note 95, at 18, guideline 9.6 (modified by author).

<sup>162</sup> G.A. Res. 45/158, *supra* note 12, art 46; MW, *supra* note 12, art. 46.

<sup>163</sup> G.A. Res. 45/158, *supra* note 12, art 48; MW, *supra* note 12, art. 48.

- (b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.
2. States Parties shall endeavor to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

#### **Article 90<sup>164</sup>**

##### **Social Security**

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.
2. Where the applicable legislation does not allow regular migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.
3. States Parties should seek to enter into bilateral, regional or multilateral agreements to provide social security coverage and benefits, as well as portability of social security entitlements, to regular migrant workers and, as appropriate, to migrant workers in an irregular situation.<sup>165</sup>

#### **Article 91<sup>166</sup>**

##### **Residence and Work Authorizations**

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.
2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.
3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative employment, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.
4. Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during

<sup>164</sup> G.A. Res. 45/158, *supra* note 12, art. 27; MW, *supra* note 12, art. 27 (modified by author).

<sup>165</sup> ILO Multilateral Framework, *supra* note 95, at 18, guideline 9.9.

<sup>166</sup> G.A. Res. 45/158, *supra* note 12, art. 49; MW, *supra* note 12, art. 49.

the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.<sup>167</sup>

## **Article 92**

### **Authorization of Residence for Family Members**

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker.
2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States of employment shall consider favorably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

## **Article 93<sup>168</sup>**

### **Death or Dissolution of Marriage**

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favorably consider granting family members of that migrant worker residing in that State on the basis of family reunification an authorization to stay and work if they have resided in the State of employment for four years and in no case less than equal in length of time to the time they have already resided in that State.
2. In the case of death of a migrant resident or dissolution of marriage, the State of residence shall grant family members of the residents(s) residing in that State on the basis of family reunification an authorization to adopt the same rights of the original residents provided they can meet the same qualifications of independent income sufficient to meet their obligations in the State of residence.
3. Members of the family in all cases shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment or residence.
4. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or residence or by bilateral and multilateral treaties applicable to that State.

## **Article 94<sup>169</sup>**

### **Freedom to Choose Remunerated Activity**

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.
2. For any migrant worker a State of employment may:
  - (a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;
  - (b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavor to provide for recognition of such

<sup>167</sup> G.A. Res. 45/158, *supra* note 12, art. 51; MW, *supra* note 12, art. 51.

<sup>168</sup> G.A. Res. 45/158, *supra* note 12, art. 50; MW, *supra* note 12, art. 50.

<sup>169</sup> G.A. Res. 45/158, *supra* note 12, art. 52; MW, *supra* note 12, art. 52 (modified by author).

- qualifications when they are impartially found to be functionally equivalent
3. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

**Article 95<sup>170</sup>**

**Unemployment**

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 58 and 90 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:
  - (a) Unemployment benefits;
  - (b) Access to public work schemes intended to combat unemployment;
  - (c) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 94 of the present Convention.
2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 27 of the present Convention.

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<sup>170</sup>G.A. Res. 45/158, *supra* note 12, art. 54; MW, *supra* note 12, art. 54 (modified by author).

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# 05

## Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families

### Article 96<sup>171</sup>

#### Scope

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in Part II and, except as modified below, the rights set forth in Part III.

### *Migrant entrepreneurs and migrant investors*

#### Article 97

1. In order to facilitate international investment on terms that contribute to the development of States Parties and to protect the rights of investors and entrepreneurs to clear and transparent rules of investment, States Parties undertake to make available certain visas for migrant entrepreneurs, as defined in article 53, paragraph 3 of the present Convention, and similar business individuals and investors (together, "entrepreneurship visa"), in coordination with their respective domestic legal frameworks.
2. While such a framework will depend on each domestic system and its immigration policies and is ultimately a matter of state discretion, States Parties are encouraged to incorporate the following non-exclusive principles into their systems of evaluating candidates for initial and renewed visas:
  - (a) The business plan of the applicant and the applicant's educational and professional background, as appropriate for the specific industry;
  - (b) Third-party endorsement by individuals or organizations with specialized knowledge of the relevant industry;
  - (c) A de-emphasis on, or alternatives to, investment thresholds, as appropriate for the specific industry;
  - (d) Sufficient time for businesses to generate profits, balancing the purpose of the visa with the recognition that many ultimately successful businesses may not be immediately profitable;
  - (e) Clear and transparent extension and settlement criteria;
  - (f) Interim monitoring mechanisms.
3. States Parties undertake to make publicly available regular reports on their implementation and regulation of the entrepreneurship visas.
  - (a) Reports should include, at a minimum:
    - i. The criteria used to award entrepreneurship visas;
    - ii. Detailed information on those awarded and denied entrepreneurship visas by industry;

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<sup>171</sup> G.A. Res. 45/158, *supra* note 12, art. 57; MW, *supra* note 12, art. 57.

- iii. Detailed information regarding the rights and privileges attached with each category of entrepreneurship visa, including but not limited to the duration of visa; processes, if any, to full citizenship; any intermediate review process throughout the duration of the visa and rights during that process (such as the right to appeal and the right to due process);
  - iv. Detailed information on investment thresholds and any monetary contributions given to the State Party in connection with or with the expectation of securing an entrepreneurship visa.
- (b) States Parties undertake to release such report within one year of entry into force of the present Convention for the States Parties concerned.
- (c) Thereafter, States Parties undertake to report every four years.
- (d) In the interest of maximum transparency, States Parties are strongly encouraged to release such reports online.
- 4. To further entrepreneurial opportunities internationally, States Parties are encouraged to take steps, individually and through international assistance and co-operation, especially economic, technical, and educational, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized in the present Chapter by all appropriate means. States Parties are encouraged to partner with the private sector as appropriate to effectuate this Chapter.
- 5. States Parties may, at their discretion, impose duties on applicants for entrepreneurship visas in connection with this article. Duties may include the applicant's obligation to provide truthful and candid disclosures throughout the application process.

### ***Temporary migrant workers***

#### **Article 98**

##### **Modification of Rights**

1. Temporary migrant workers, as defined in article 53, paragraph 4 of the present Convention, shall be entitled to the rights provided for in this Convention, with the exception of the rights established in the following provisions:
  - (a) Liberty of movement and freedom to choose residence as specified in the provisions of article 80.
  - (b) Access to educational institutions or vocational guidance and training as specified in the provisions of article 85, paragraph 1 (a), (b) and (d).
  - (c) Access to social housing schemes as specified in the provisions of article 85, paragraph 1 (c).
  - (d) Access to social and health services as specified in the provisions of article 85, paragraph 1 (e).
  - (e) Access to social security systems as specified in the provisions of article 90.
  - (f) Protections in the case of termination of employment as specified in the provisions of article 91, paragraphs 2 and 3.
  - (g) Right to seek alternative employment and right to participate in public work schemes and retraining programs as specified in the provisions of article 95.
  - (h) Right to freely choose remunerated activity as specified in the provisions of article 94.
  - (i) Access to unemployment benefits as specified in the provisions of article 95, paragraph 1.
2. All temporary migrant workers, without prejudice to skill level, shall enjoy the rights articulated in this part of the present Convention
3. States Parties shall ensure that any policy relating to work responds to established labor



market needs, and that these policies respect the principle of equality of treatment between migrant and national workers as it pertains to the rights set out in article 58 of the present Convention.<sup>172</sup>

4. States Parties may conclude, after consulting social partners, collective agreements, which, while respecting the overall protection of temporary workers, may establish arrangements concerning the working and employment conditions of temporary workers which may differ from those referred to in article 85 paragraphs I (a)-(b), paragraph I (c), as it pertains to social housing schemes and paragraph I (e), of the present Convention.<sup>173</sup> Such agreements shall include a qualifying period for equality of treatment, which may not exceed five years.<sup>174</sup>

## Article 99

### Civil and Political Rights

States Parties must respect and protect the civil and political rights of temporary migrant workers.<sup>175</sup>

## Article 100

### Work Authorization

States Parties may issue work authorizations for temporary migrant workers, that:

1. Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully within its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that may not exceed two years.<sup>176</sup>
2. Within a period of time not exceeding six months limit the authorization to work to one employer, subject to the provisions of article 78, paragraph 2 of the present Convention.
3. Subject to paragraph 1 of the present article, limit the authorization to work to the sector within which a work visa has been issued.<sup>177</sup>
4. Subject to paragraph 1 of the present article, limit the authorization to work to a specific region. Such restrictions shall be justified only on grounds specified in article 80, paragraph 2 of the present Convention or on the basis of general interest relating to the protection of temporary workers, the requirements of health and safety at work or the need to ensure that the labor market functions properly and abuses are prevented.<sup>178</sup>
5. The restrictions in paragraphs 1 through 4 of the present article will not apply if the temporary worker has been made subject to abusive working conditions or the employer has failed to abide by the terms of the employment contract.

## Article 101

### Termination of Employment

1. Temporary migrant workers shall, upon loss of their employment through no fault of their own, be allowed to find alternative employment during a period of no less than one month.
2. States of employment may, subject to paragraph 1 of the present article, require temporary migrant workers who can no longer work because of injury or illness to return

<sup>172</sup> ILO Multilateral Framework, *supra* note 95, at 13, guideline 5.5 (modified by author).

<sup>173</sup> Council Directive 2008/104, of the European Council and of the Council of 19 November 2008 on Temporary Agency Work, art. 5(3), 2008 O.J. (L 327) 9, 12 (modified by author).

<sup>174</sup> *Id.* art. 5(4) (modified by author).

<sup>175</sup> See Martin Ruhs, *The Price of Rights: Regulating International Labor Migration* 193 (Princeton University Press, 2013).

<sup>176</sup> G.A. Res. 45/158, *supra* note 12, art. 52; MW, *supra* note 12, art. 52 (modified by author).

<sup>177</sup> Ruhs, *supra* note 175, at 182.

<sup>178</sup> Council Directive 2008/104, *supra* note 173, art. 4(1) (modified by author).

to their State of origin once they are able to do so.<sup>179</sup>

## Article 102

### Contract

1. If a temporary migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 27 paragraph 1, of the present Convention.<sup>180</sup>
2. States Parties shall ensure the effective protection for migrants to exit any temporary work program whenever they wish to do so.<sup>181</sup>

## Article 103

### Equality of Treatment

States of employment shall adopt measures to ensure that temporary migrant workers lawfully within its territory enjoy equal treatment with nationals regarding employment and training opportunities after a reasonable period of employment that may not exceed five years.<sup>182</sup>

## Article 104

### Multiple Entry Visa

States of employment may limit the number of exits and re-entries available on visas issued to temporary migrant workers to no fewer than three per year.<sup>183</sup>

## Article 105

### Access to Employment

1. Employers should keep temporary migrant workers informed of permanent vacancies and give them the same opportunity as other workers to find permanent employment.<sup>184</sup>
2. States of employment may limit access by a temporary migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or others by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.<sup>185</sup>

## Article 106

### Social Rights including Portable Pensions

1. States of employment may not limit equal access to primary or secondary education to children of temporary migrant workers who have been authorized to bring their families with them.<sup>186</sup>
2. States of origin may not limit access to social rights for temporary migrant workers upon return.
3. States of employment may restrict access to social rights for temporary migrant workers if there is demonstrable evidence that granting the rights creates a net fiscal loss for that

<sup>179</sup> Lister, *supra* note 94, at 114, n. 65.

<sup>180</sup> G.A. Res. 45/158, *supra* note 12, art. 54; MW, 1990, art. 54 (modified by author).

<sup>181</sup> See also Ruhs, *supra* note 176.

<sup>182</sup> ILO Multilateral Framework, *supra* note 95, at 17, guideline 9.4 (modified by author).

<sup>183</sup> Lister, *supra* note 94, at 114.

<sup>184</sup> Council Directive 2008/104, *supra* note 173, art. 6(1) (modified by author).

<sup>185</sup> G.A. Res. 45/158, *supra* note 12, at 17-18; MW, *supra* note 12, art. 52(3) (modified by author).

<sup>186</sup> See also G.A. Res. 70/1, *supra* note 7, Sustainable Development Goal 4.

State.<sup>187</sup>

4. Restrictions of social rights shall be limited to means-tested benefits and may be applied only for a specified period of time that may not exceed five years.
5. States Parties should consider establishing a welfare fund to assist migrant workers and their families in cases of illness, injury, repatriation, abuse or death.<sup>188</sup>
6. States of employment shall make appropriate arrangements to ensure the maintenance of acquired rights and rights in course of acquisition of temporary migrant workers, including ensure the transfer to temporary workers of any contributory benefits upon their return to their State of origin.<sup>189</sup>
7. Arrangements for portability of benefits should cover, at a minimum, any pension benefits acquired or in course of acquisition in the State of employment.<sup>190</sup>
8. States Parties should endeavor to conclude bilateral or multilateral agreements to facilitate the transfer of contributory social and health benefits earned by temporary migrant workers upon return to their State of origin.
9. States Parties shall take appropriate measures with the aim of ensuring that the transfer of acquired rights are not subject to double taxation.

## Article 107

### Temporary Residence Status

It is at the discretion of the State of employment to decide the duration of the period for which a temporary work authorization is issued. This period should be set so as to ensure that temporary migrant workers can generate the net financial gains necessary to make migration financially worthwhile.<sup>191</sup>

## Article 108

### Renewal of Status

1. States of employment shall ensure that foreign workers who are employed or have offers of employment at the end of the period for which they have a work authorization are allowed to re-apply for a new work authorization.<sup>192</sup>
2. States of employment may make eligibility for renewal of status conditioned upon:
  - (a) Good behavior, such as no felony convictions, compliance with conditions attached to any previous work or residence permit, including overstay;<sup>193</sup>
  - (b) Regular periods of employment and the payment of taxes,<sup>194</sup> without prejudice to articles 77 and 78 of the present Convention.
3. States of employment should ensure that eligibility for renewal of status allows periods spent away from that State.<sup>195</sup>

<sup>187</sup> Ruhs, *supra* note 175.

<sup>188</sup> ILO Multilateral Framework, *supra* note 95, at 24, guideline 12.10 (modified by author).

<sup>189</sup> ILO, Migration for Employment Recommendation (Revised), R086, art. 21(3) (1949), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312424, \[https://perma.cc/A99F-CWYR\].](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312424, [https://perma.cc/A99F-CWYR].)

<sup>190</sup> Philip Martin, Immigration Policy and Agriculture: Possible Directions for the Future, 5 J. ON MIGRATION AND HUM. SECURITY 252 (2017).

<sup>191</sup> Ruhs, *supra* note 176, at 184.

<sup>192</sup> Lister, *supra* note 94, at 122.

<sup>193</sup> Organisation for Economic Co-Operation and Development [OECD], *International Migration Outlook*, SOPEMI, 2008, at 187.

<sup>194</sup> Lister, *supra* note 94, at 122.

<sup>195</sup> This draws on the analysis in European Migration Network, Temporary and Circular Migration: empirical evidence, current policy practice and future options in EU Member States (2011), [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/circular-migration/0a\\_emn\\_synthesis\\_report\\_temporary\\_circular\\_migration\\_final\\_sept\\_2011\\_en.pdf, \[https://perma.cc/UY5W-ZY26\].](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/circular-migration/0a_emn_synthesis_report_temporary_circular_migration_final_sept_2011_en.pdf, [https://perma.cc/UY5W-ZY26].)

## Article 109

### Permanent Residence Status

1. States of employment shall implement transparent criteria for regulating the transfer of migrant workers from temporary residence status to permanent residence status.<sup>196</sup>
2. Temporary migrant workers shall be eligible to apply for regular permanent residence after a specified period of time not exceeding five years.<sup>197</sup>
3. No temporary migrant worker shall be renewed in temporary status longer than seven years.
4. After seven years States of employment must offer permanent residence to temporary migrant workers who have met all the conditions of their employment together with all applicable laws of the State of employment.

## Article 110

### Circular and Return Migration

1. States Parties undertake to adopt policies with the aim to encourage circular and return migration and reintegration into the State of origin, including by promoting schemes and circulation-friendly visa policies.<sup>198</sup>
2. States Parties undertake to adopt measures to facilitate the return of migrants whose temporary work permits have expired. Such measures may include:
  - (a) Recognition and accreditation of qualifications and experience acquired abroad in the State of origin;<sup>199</sup>
  - (b) Assistance through welfare funds established under article 106, paragraph 5;<sup>200</sup>
  - (c) Opening of special savings accounts offering migrant workers the opportunity to save part of their wages at market rates, with the possible condition that the savings be released to migrant workers on their return to their home country;
  - (d) Allowing migrant workers to open up foreign currency accounts.
3. It is up to the State of employment to establish the time period and conditions during which a temporary migrant may be prohibited from re-entering its territory. But for temporary migrant workers in full compliance with the laws of the State of employment, this time period should in no cases extend beyond one year.

### Migrant domestic workers

## Article 111

1. Migrant domestic workers, as defined in article 53, paragraph 5 (a), of the present Convention, shall be entitled to the rights provided for in Part IV, in accordance with national laws and regulations,<sup>201</sup> except the provisions of article 85, paragraph 1 (c), as it pertains to social housing schemes.
2. Temporary migrant domestic workers shall enjoy the same rights and may be subject to the same restrictions as set forth in articles 98- 110 of the present Convention.
3. States Parties undertake to extend the same minimum protections that apply to workers generally to domestic workers, in particular in the areas of employment, maternity protection, wages, occupational safety and health and other conditions of work.<sup>202</sup>
4. States Parties shall take measures to ensure migrant domestic workers residing in the

<sup>196</sup> See also Ruhs, *supra* note 175, at 177.

<sup>197</sup> Lister, *supra* note 94, at 122.

<sup>198</sup> ILO Multilateral Framework, *supra* note 95, at 30, guideline 15.8 (modified by author).

<sup>199</sup> *Id.* at 24, guideline 12.6 (modified by author).

<sup>200</sup> *Id.* at 24, guideline 12.10 (modified by author).

<sup>201</sup> Domestic Workers Convention, *supra* note 88, art. 14 (modified by author).

<sup>202</sup> ILO Multilateral Framework, *supra* note 95, at 18, guideline 9.8 (modified by author).

- household decent living conditions that respect their privacy.<sup>203</sup>
5. States Parties may, by measure of national laws, regulations, collective agreements or arbitration awards, provide for the payment of a limited proportion of the remuneration of migrant domestic workers in the form of payments in kind that are not less favorable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.<sup>204</sup>
  6. States Parties, recognizing the specific vulnerability of migrant domestic workers, should consider establishing mechanisms to protect them from abuse, harassment and violence, such as programs for the relocation from the household and rehabilitation of migrant domestic workers subjected to such conditions, including the provision of temporary accommodation and health care.<sup>205</sup>

### ***Other migrant workers***

#### **Article 112<sup>206</sup>**

##### **Frontier Migrant Workers**

1. Frontier migrant workers, as defined in article 53, paragraph 5 (b), of the present Convention, shall be entitled to the rights provided for in Part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.
2. States of employment shall consider favorably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier migrant workers.
3. Frontier migrant workers should not be charged above-market rates by States Parties, employers or their agents for transportation to and from their work sites, or for food or water at their work sites or while in transit. They should also be permitted to bring their own food and drinks to work. Transportation and food and water costs should not be automatically deducted from the pay of frontier migrant workers.

#### **Article 113<sup>207</sup>**

##### **Seasonal Migrant Workers**

1. Seasonal migrant workers, as defined in article 53, paragraph 5 (c), of the present Convention, shall be entitled to the rights provided for in Part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal migrant workers, taking into account the fact that they are present in that State for only part of the year.
2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal migrant workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

<sup>203</sup> Domestic Workers Convention, *supra* note 88, art. 6 (modified by author).

<sup>204</sup> *Id.* art. 12(2) (modified by author).

<sup>205</sup> *Id.* art. 5 (modified by author).

<sup>206</sup> G.A. Res. 45/158, *supra* note 12, at 19; MW, *supra* note 12, art. 58.

<sup>207</sup> G.A. Res. 45/158, *supra* note 12, art. 59; MW, *supra* note 12, art. 59.

**Article 114<sup>208</sup>****Itinerant Migrant Workers**

Itinerant migrant workers, as defined in article 53, paragraph 5 (f), of the present Convention, shall be entitled to the rights provided for in Part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant migrant workers in that State.

**Article 115<sup>209</sup>****Project-Tied Migrant Workers**

1. Project-tied migrant workers, as defined in article 53, paragraph 2 (g) of the present Convention, and members of their families shall be entitled to the rights provided for in Part IV except the provisions of article 85, paragraphs 1 (a), (b) and (c), as it pertains to social housing schemes, and articles 94 and 95.
2. If a project-tied migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 27, paragraph 1, of the present Convention.
3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavor to enable project-tied migrant workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.
4. Without prejudice to the provisions of article 60 paragraph 2 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied migrant workers in their State of origin or habitual residence.

**Article 116<sup>210</sup>****Specified-Employment Migrant Workers**

1. Specified-employment migrant workers as defined in article 53, paragraph 5 (h), of the present Convention, shall be entitled to the rights provided for in Part IV, except the provisions of article 85, paragraphs 1 (a), (b) and (c), as it pertains to social housing schemes, article 94, and article 95, paragraph 1 (c).
2. Members of the families of specified-employment migrant workers shall be entitled to the rights relating to family members of migrant workers provided for in Chapter VII of the present Convention.

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<sup>208</sup> G.A. Res. 45/158, *supra* note 12, art. 60; MW, *supra* note 12, art. 60.

<sup>209</sup> G.A. Res. 45/158, *supra* note 12, art. 61; MW, *supra* note 12, art. 61 (modified by author).

<sup>210</sup> G.A. Res. 45/158, *supra* note 12, art. 62; MW, *supra* note 12, art. 62 (modified by author).

# 06

## Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers, residents, investors and members of their families

### Article 117<sup>211</sup>

#### International Coordination

States Parties shall identify opportunities for employment – including specifying skills, fields and numbers of prospective employees – and facilitate the movement of migrant workers, residents and investors through the “Mobility Visa Clearing House” web platform established by article 216 of the present Convention, as well as through other policies and procedures, including bilateral, regional or multilateral agreements and integration schemes.<sup>212</sup>

### Article 118

#### International Recruitment – Laws and Regulations

States Parties undertake to establish and promote legal practices to regulate recruitment of migrant workers and to promote the elimination of recruitment malpractices, including by:

1. Establishing laws or regulations, which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses;<sup>213</sup>
2. Establishing mechanisms for the regulation and accreditation of recruitment agencies and employers, and blacklisting of agencies that fail to meet the minimum standards for fair recruitment;<sup>214</sup>
3. Adopting measures such as licensing and supervising recruitment and placement services for migrant workers and suspending or withdrawing their licenses in case of violation.<sup>216</sup>
4. States Parties shall provide for remedies from any or all persons and entities involved in the recruitment and employment of migrant workers for violation of their rights.<sup>217</sup>

<sup>211</sup> ILO Multilateral Framework, *supra* note 95, at 13, guideline 5.2 (modified by author).

<sup>212</sup> See generally Michael A. Clemens, *Global Skill Partnerships: A Proposal for Technical Training in a Mobile World*, Ctr. For Global Development, CGD Policy Paper No. 040 (2014), <https://www.cgdev.org/sites/default/files/clemens%20global%20skill%20partnerships%20cgd%20web.pdf>, [https://perma.cc/69DS-Q49R].

<sup>213</sup> ILO, Private Employment Agencies Convention, C181, art. 8 (June 19, 1997), [http://www.ilo.org/dyn/normlex/en/f?p=NORML\\_EXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORML_EXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326), [https://perma.cc/L7GW-C7XM].

<sup>214</sup> Assoc. of Southeast Asian Nations [ASEAN], Declaration on the Protection and Promotion of the Rights of Migrant Workers, at art. 14 (Jan. 13, 2007), <http://www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf>, [https://perma.cc/C4QT-NF22].

<sup>215</sup> ILO Multilateral Framework, *supra* note 95, at 24–25, guideline 13 (modified by author).

<sup>216</sup> *Id.* at 25, guideline 13.5 (modified by author).

<sup>217</sup> ILO Multilateral Framework, *supra* note 95, at 20, guideline 10.6 (modified by author).

## Article 119

### Supporting Orderly Migration

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating irregular or clandestine movements and employment of migrant workers, residents and investors in an irregular situation.<sup>218</sup>
2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.<sup>219</sup>
3. Whenever the States Parties concerned consider the possibility of regularizing the situation of migrant workers, residents and investors in an irregular situation in accordance with applicable national legislation and bilateral or multilateral agreements, they shall take into consideration the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.
4. States Parties should adopt measures to transform informal economy activities into formal activities and to ensure that migrant workers, residents and investors in these activities benefit from the rights referred to under this Chapter.<sup>220</sup>

## Article 120<sup>221</sup>

### Orderly Return

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers, residents, investors and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.
2. Concerning migrant workers, residents, investors and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.
3. Any type of return, including deportation, must respect the fundamental principle of the best interest of children.<sup>222</sup>

## Article 121

### Death

States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.<sup>223</sup>

## Article 122<sup>224</sup>

### Remittances

1. States Parties shall take appropriate measures to establish conditions for cheaper, faster

<sup>218</sup> G.A. Res. 45/158, *supra* note 12, art. 68; MW, *supra* note 12, art. 68 (modified by author).

<sup>219</sup> G.A. Res. 45/158, *supra* note 12, art. 69; MW, *supra* note 12, art. 69 (modified by author).

<sup>220</sup> ILO Multilateral Framework, *supra* note 95, at 19, guideline 9.13 (modified by author).

<sup>221</sup> G.A. Res. 45/158, *supra* note 12, art. 67; MW, *supra* note 12, art. 67 (modified by author).

<sup>222</sup> G.A. Res. 44/25, Convention on the Rights of the Child, art. 3 (Nov. 20, 1989) (modified by author).

<sup>223</sup> G.A. Res. 45/158, *supra* note 12, art. 71; MW, *supra* note 12, art. 71.

<sup>224</sup> G.A. Res. 45/158, *supra* note 12, art. 47(2); MW, *supra* note 12, art. 47(2) (modified by author).



and safer transfer of remittances in both source and recipient countries,<sup>225</sup> including by facilitating accessible financial services, reducing transaction fees, providing tax incentives and promoting greater competition between financial institutions, as well as by implementing the recommendations of the Remittance Subcommittee established in article 210 of the present Convention.

2. States Parties shall refrain from imposing taxes or fees on the sending of remittances.

### **Article 123**

#### **Foster Positive Relations Between Migrant Workers and Host Communities**

States Parties should consider adopting measures to foster contacts between migrant workers, residents, investors and host communities<sup>226</sup> and to work towards the achievement of harmony and tolerance between receiving States and migrant workers, residents and investors.<sup>227</sup>

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<sup>225</sup> Financing for Development, *Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)*, at 19–20 (July 13–16, 2015); G.A. Res. 70/1, Sustainable Development Goals, *supra* note 186, at 21.

<sup>226</sup> U.N. Secretary-General, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, ¶ 40, U.N. Doc. A/70/59 (Apr. 21, 2016).

<sup>227</sup> ASEAN, *supra* note 214, art. 6.

# Refugees, Forced Migrants, Asylum Seekers and International Protection<sup>228</sup>

ch.v

# 01

## General Provisions

### Article 124

#### Purpose

The purpose of this Chapter is to lay down standards for the qualification of persons as beneficiaries of international protection, to provide for a uniform status for refugees or other forced migrants eligible for international refuge, to establish standards for the provision of interim protection, and for the content of the protection granted.<sup>229</sup>

### Article 125

#### Scope and Definitions

1. For the purposes of this Convention the following definitions shall apply:

(a) The term “forced migrant” shall apply to:

Every person who owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order in either part or the whole of her or his State of nationality or in the case of a stateless person her or his state of habitual residence, is compelled to leave his or her State of origin or place of habitual residence in order to seek refuge in another place outside his or her State of origin or habitual residence;<sup>230</sup> and

Any person who owing to the risk of suffering serious harm is compelled to leave her or his State of origin, or in the case of a stateless person, her or his State of former habitual residence; and

Any person for whom there are substantial grounds for believing that the person concerned, if returned to his or her State of origin, or in the case of a stateless person, to his or her State of former habitual residence, would face a real risk of suffering serious harm.

(b) The term “refugee” shall apply to any person who owing to well-founded fear of being persecuted for reasons of race, gender, religion, nationality, membership of a particular social group or political opinion, is outside the State of her or his origin and is unable or, owing to such fear, is unwilling to return to that country; or who, not having a nationality and being outside the State of her or his former habitual residence is unable or, owing to such fear, is unwilling to return to it.<sup>231</sup>

The term “social group” shall be taken to include: a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society; in some cases, the actions of the persecutors may serve to identify or even cause the creation of a particular social group in society.<sup>232</sup>

<sup>228</sup> This chapter reflects the research and drafting of Kiran Banerjee and draws on research prepared for the SIPA Workshop on a Model Mobility Treaty, Spring 2015. The chapter reflects the many useful suggestions of T. Alexander Aleinikoff, Pierre Bertrand, Emma Borgnäs, Guy Goodwin-Gill, Daniel Naujoks, Susan Martin, and Sarah Deardorff Miller.

<sup>229</sup> Directive 2011/95, of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast), art. 1, 2011 O.J. (L 337) 9, 13 (modified by author).

<sup>230</sup> Based on UNHCR Resettlement Handbook (2011), <http://www.unhcr.org/46f7c0ee2.pdf>, [https://perma.cc/V2TT-58N6].

<sup>231</sup> 1951 Refugee Convention, *supra* note 5, art. 1 to include gender as ground of persecution (modified by author).

<sup>232</sup> The U.N. Refugee Agency, Guidelines on International Protection: “Membership of a Particular Social Group” within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HGR/CIP/02/02 (May 7, 2002) 3, 4 (citing McHugh, J., in *Applicant A v. Minister for Immigration and Ethnic Affairs*, (1997) 190 CLR 225, 264, 142 ALR 331) (modified by author).

The term “refugee” is without prejudice to the origin or source of persecution, whether a State, agents of a State, or a non-State actor. It is recognized that a “well-founded fear of persecution” may arise in situations of international or national armed conflict, particularly when there are serious reasons for considering that genocide, crimes against humanity, war crimes or ethnic cleansing are being committed.<sup>233</sup>

(c) In the case of a “forced migrant” or “refugee” who has more than one nationality, the term “the State of her or his origin” shall mean each of the countries of which she or he is a national, and a person shall not be deemed to be lacking the protection of the State of her or his nationality if, without any valid reason based on well-founded fear of persecution or serious harm, she or he has not availed herself or himself of the protection of one of the countries of which she or he is a national.<sup>234</sup>

(d) “Serious harm” consists of a threat to an individual’s physical survival, which is external to her or him, or threats of torture or inhuman or degrading treatment or punishment or arbitrary incarceration, such as may arise during indiscriminate violence, severe international or internal armed conflict, environmental disaster, enduring food insecurity, acute climate change, or events seriously disturbing public order.<sup>235</sup>

(e) “Residence permit” means any permit or authorization issued by the authorities of States Parties, in the form provided for under that State’s law, allowing a person who is a beneficiary of international protection to reside on its territory;

(f) “Unaccompanied minor” means a child who arrives on the territory of the state unaccompanied by an adult responsible for him or her whether by law or by the practice of the state of arrival, and for as long as he or she is not effectively taken into the care of such a person; it includes a child who is left unaccompanied after he or she has entered the territory of the state;<sup>236</sup>

(g) “1951 Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as complemented by the New York Protocol of 31 January 1967.

## Article 126

### Rights Granted Apart from this Convention

This chapter shall be without prejudice to the rights laid down in the 1951 Refugee Convention or in earlier chapters of this Convention.<sup>237</sup> Nothing in this Convention shall be deemed to impair any rights and benefits granted by States in bilateral, regional or global multilateral treaties to refugees or other forced migrants apart from this Convention. International refugee or interim protection shall be without prejudice to recognition of refugee status under the 1951 Refugee Convention or under the other provisions of this Chapter.

<sup>233</sup> This article is based on a suggestion from Pierre Bertrand.

<sup>234</sup> 1951 Refugee Convention, *supra* note 5, art. 1 (modified by author).

<sup>235</sup> Council Directive 2011/95, *supra* note 229, art. 15 (modified by author); see also Organization of African Unity [OAU], Convention Governing the Specific Aspects of Refugee Problems in Africa, art. 1 (modified by author), June 20, 1974, 14691 U.N.T.S. 46, 47-48; 2015 SIPA Model Mobility Treaty Workshop Memo (modified by author).

<sup>236</sup> Council Directive 2011/95, *supra* note 229, art. 2(l).

<sup>237</sup> *Id.* art. 20; see also Council Directive 2001/55 of 20 July 2001 on Minimum Standards for giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof, art. 3, 2001 O.J. (L 212) 12, 14 (EC) (modified by author).

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# 02

## Procedures for the Provision of International Protection

### Article 127

#### International Protection

A person who is a refugee or other forced migrant, as defined in article 125 shall be entitled to international protection. International protection shall be realized by States through the granting of international refugee status, or when urgent circumstances temporarily do not allow for the individual assessment of protection claims, by the granting of interim protection.

### Article 128<sup>238</sup>

#### Protection Needs Arising Sur Place

1. A well-founded fear of persecution or real risk of suffering serious harm may be based on events which have taken place since a person left her or his State of origin.
2. A well-founded fear of persecution may be based on activities which a person has engaged in since he or she left the State of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the State of origin.

### Article 129

#### Assessment and Determination of Claims to International Protection

1. States Parties shall establish appropriate procedures for the determination of claims to international protection in accordance with the provisions of the present Convention.
2. States Parties shall take measures to support the establishment of a single harmonized asylum procedure, to be conducted by a competent authority under globally uniform standards. The goal of such measures will be the implementation of a broadly comprehensive system in which a central and expert authority would determine, in a single procedure, the protection needs of an applicant. In cases in which UNHCR has performed a status determination this will be considered sufficient to entitle an individual to international protection under the provisions of the present Convention, although this shall not preclude States Parties from requiring additional security screening and other procedures following such recognition.
3. States Parties shall ensure that appropriate guidance is provided to border, immigration and police authorities on the referral of such claims to the relevant authority and to proceed according to Articles 137 through 140 below with admission arrangements.

### Article 130<sup>239</sup>

#### Internal Protection Option

1. As part of the assessment of the claim for international protection, States Parties may determine that a person is not in need of international protection if:
  - (a) She or he could find effective protection in another part of the State of origin, if

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<sup>239</sup> Council Directive 2011/95, *supra* note 229, art. 8 (modified by author).

under all circumstances it would be reasonable to expect her or him to do so;<sup>240</sup> and  
 (b) She or he can safely and legally travel to and enter that part of the country and can reasonably be expected to reside and settle there.

2. In examining whether a person has a well-founded fear of persecution or is at real risk of suffering serious harm, or has access to effective protection against persecution or other forms of serious harm in a part of the State of origin in accordance with paragraph 1 of the present article, States Parties shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant. States shall seek and have due regard to the views of UNHCR concerning the viability of access to protection against persecution or other forms of serious harm in either the whole or a part of the State of origin.
3. Where the actors of persecution or serious harm are the State or agents of the State, it will be presumed that effective protection is not available to an individual.
4. In the case of an unaccompanied minor, the assessment of effective protection shall take account of the existence of appropriate care and custodial arrangements, if any, which are in the best interests of child.

## Article 131

### More Favorable Standards

States Parties may introduce or retain more inclusive standards in addition to those listed in this chapter for determining who qualifies as a person eligible for international refuge or interim protection, and for determining the content of international protection, in so far as those standards are compatible with this Convention and consistent with States' obligations under international law.<sup>241</sup>

## Article 132<sup>242</sup>

### General Obligations

Every person enjoying international protection has duties to the country in which they find themselves, which require in particular that they conform to laws and regulations taken for the purposes of maintaining public order.

## Article 133<sup>243</sup>

### Non-Discrimination

In accordance with the rights enumerated in Article 5:

States Parties shall apply the provisions of the present Convention, in accordance with the international instruments concerning human rights, to refugees or other forced migrants without distinction of any kind such as to sex, gender, race, color, language, religion or conviction, sexual orientation, disability, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

## Article 134<sup>244</sup>

### Exemption from Exceptional Measures

With regard to exceptional measures such as internment, sequestration of property, or the blocking of assets, which may be taken against the person, property or interests of nationals of a foreign State, States Parties shall not apply such measures to a person entitled to

<sup>240</sup> 2015 SIPA Model Mobility Treaty Workshop Memo, *supra* note 235.

<sup>241</sup> Council Directive 2011/95, *supra* note 229, art. 3 (modified by author).

<sup>242</sup> 1951 Refugee Convention, *supra* note 5, art. 2 (modified by author).

<sup>243</sup> *Id.* art. 3; G.A. Res 217 (III) A., Universal Declaration of Human Rights, art. 2 (Dec. 10, 1948), (modified by author).

<sup>244</sup> 1951 Refugee Convention, *supra* note 5, art. 8 (modified by author).

international protection who is formally a national of the said State solely on account of such nationality. States Parties which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favor of such persons.

#### **Article 135<sup>245</sup>**

##### **Provisional Measures**

Nothing in this Convention shall prevent a State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the State Party that that person is in fact a person entitled to international protection and that the continuance of such measures is necessary in her or his individual case in the interests of national security. All such measures must remain reasonable and proportionate.

#### **Article 136<sup>246</sup>**

##### **Exemption from Reciprocity**

1. Except where this Convention contains more favorable provisions, all persons entitled to international protection shall have the right to the same treatment by States Parties as is accorded to foreign nationals generally.
2. All persons entitled to international protection shall enjoy exemption from reciprocity in the territory of States Parties.
3. States Parties shall consider favorably the possibility of according to persons entitled to international protection, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraph 2 of the present article.

#### **Article 137<sup>247</sup>**

##### **Refugees and other Forced Migrants Unlawfully in a Country of Refuge**

1. States Parties shall not impose penalties, on account of their illegal entry or presence, on persons who, coming from a territory where they faced a well-founded fear of persecution or were at risk of serious harm enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. Individuals and their families while awaiting status determination will make their whereabouts known to the authorities. States shall not apply restrictions to the movements of persons awaiting status determination other than those which are necessary<sup>248</sup> and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. Any such restrictions must remain reasonable and proportionate; detention must only be a choice of last resort, after exhausting all alternatives. States shall allow all such persons a reasonable period and all the necessary facilities to obtain admission into another country.
3. In applying this article, children should not, as a general rule, be detained. When considering whether minors should be subject to any form of detention, authorities should respect the principle of the best interests of the child. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their

<sup>245</sup> *Id.* art. 9 (modified by author).

<sup>246</sup> *Id.* art. 7 as extensively modified.

<sup>247</sup> *Id.* art. 31 (modified by author).

<sup>248</sup> Jane McAdam, *Guy S. Goodwin-Gill: The International Refugee Law Scholar*, 28 INT'L J. OF REFUGEE L. 552, 552-563 (2016) (Qualified in light of Article 31 of the 1951 Convention Re-lating to the Status of Refugees: Non-Penalization, Detention and Protection, Oct. 2001, <http://www.unhcr.org/3bcfd164.pdf>, [<https://perma.cc/8W5S-3YF2>]).

migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it shall conform to the law of the relevant country and only be used as a measure of last resort and for the shortest appropriate period of time. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation that provide adequate assistance and protection.<sup>249</sup>

### **Article 138<sup>250</sup>**

#### **Prohibition of Expulsion or Return (“refoulement”)**

1. No State shall expel or return (“refouler”) a person in any manner whatsoever to the frontiers of territories where her or his life or freedom would be threatened on account of her or his race, gender, religion, nationality, membership of a particular social group or political opinion, or where the person would otherwise be at risk of serious harm.<sup>251</sup>
2. The right not to be subject to refoulement applies to persons irrespective of their formal recognition or status thus including individuals whose status has not yet been determined. States shall not expel or return an individual who applies for international protection unless and until a final decision has been taken that he or she is not entitled to international protection, or other protection against the violation of his or her rights.
3. The duty not to refoule encompasses any measure attributable to a State which could have the effect of returning a person directly or indirectly to the frontiers of territories where she or he would be at risk of serious harm.

### **Article 139<sup>252</sup>**

#### **Protection from Expulsion**

1. States Parties shall not expel a person entitled to international protection lawfully in their territory save on grounds of national security or public order
2. The expulsion of such a person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the individual shall be allowed to submit evidence to clear herself or himself, and to appeal to and be represented for the purpose before a competent authority or a person or persons specially designated by the competent authority.
3. States Parties shall allow such a person a reasonable period within which to seek legal admission into another country. States may apply during that period such internal measures as they may deem necessary, as long as such measures remain reasonable and proportionate. Detention must only be a choice of last resort, after exhausting all alternatives.

### **Article 140<sup>253</sup>**

#### **Duty to Admit and Prohibition of Carrier Sanctions**

1. All States Parties having access to the Mobility Visa Clearing House described in article 209, Chapter VIII, for the resettlement of their protected refugees and receiving adequate

<sup>249</sup> Convention on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, ¶ 61 U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005) (modified by author).

<sup>250</sup> 1951 Refugee Convention, *supra* note 5, art. 33 (modified by author in line with harm standard).

<sup>251</sup> OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, *supra* note 235, art. II(3) (drawing on the expansive reading of non-refoulement protections) (modified by author). See also International Covenant on Civil and Political Rights, art. 7, Dec. 19, 1966, 999 U.N.T.S. 171, 175, S.Exec. Doc. No. E, 95-2; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, Sept. 21, 1970, 213 U.N.T.S. 222, 224.

<sup>252</sup> 1951 Refugee Convention, *supra* note 5, art. 32 (modified by author).

<sup>253</sup> This article is based on a suggestion from Daniel Naujoks.



- funding from the Responsibility Sharing mechanism described in article 211, Chapter VIII, undertake to admit asylum seekers in accord with paragraphs 2 and 3 below.<sup>254</sup>
2. A person coming directly from a territory where she or he faced a well-founded fear of persecution or were at risk of serious harm, whose status has been confirmed by UNHCR, and who requests the benefit of this Convention at the frontier or in the territory of a Contracting State shall be admitted to the territory of that State pending a determination of her or his request, which shall be considered by a specially competent authority and shall, if necessary, be reviewed by a higher authority.<sup>255</sup>
  3. States Parties shall ensure that persons coming directly from a territory where they faced a well-founded fear of persecution or were at risk of serious harm and whose status has been confirmed by UNHCR as entitled to international protection cannot be denied access to air, land, or sea carriers, solely because they do not have a valid right to enter the country of destination. This does not prevent States Parties from requiring carriers to identify such persons on arrival to the authorities and for States to establish specific reception procedures upon arrival.

# 03

## Rights and Freedoms of All Persons Entitled to International Protection

### Article 141<sup>256</sup>

#### Freedom of Thought, Conscience and Religion

In full accordance with the rights enumerated in articles 20 and 21:

All persons entitled to international protection within the States Parties territories shall always have the right to treatment at least as favorable as that accorded to nationals with respect to freedom to practice their religion and express beliefs as well as equal freedom as regards the religious education of their children.

### Article 142<sup>257</sup>

#### Personal Status

1. The personal status of individuals entitled to international protection shall be governed by the law of the State of his or her domicile or, if he or she has no domicile, by the law of the State of his or her residence.
2. Rights previously acquired by such persons and dependent on personal status, more particularly rights attaching to marriage or other civil union, shall be respected by States Parties, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he or she not become entitled to international protection.

<sup>254</sup> U.N. General Assembly, Note on International Protection, 5-6, U.N. Doc A/AC.96/951 (Sept. 13, 2001) (modified by author); High Commissioner, Note on International Protection Addendum 1: Draft Convention on Territorial Asylum, art. 2, A/AC.96/508/Add.1 (Sept. 26 1974) (modified by author).

<sup>255</sup> Draft Convention on Territorial Asylum, *supra* note 254, art. 4 (modified by author).

<sup>256</sup> 1951 Refugee Convention, *supra* note 5, art. 4 (modified by author).

<sup>257</sup> *Id.* art. 12 (modified by author).

**Article 143<sup>258</sup>****Movable and Immovable Property**

Individuals entitled to international protection shall have the right to treatment equal to that accorded to nationals of a State Party, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

**Article 144<sup>259</sup>****Artistic Rights, Industrial and Intellectual Property**

In respect of the protection of industrial and intellectual property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a person entitled to international protection shall be accorded in the country in which he or she has his or her habitual residence the same protection as is accorded to nationals of that country. In the territory of any other States Parties, he or she shall be accorded the same protection as is accorded in that territory to nationals of the country in which he or she has his or her habitual residence.

**Article 145<sup>260</sup>****Right of Association**

As regards non-political associations and trade unions persons entitled to international protection lawfully staying in the territory of States Parties shall have the right to the same treatment as is accorded to nationals.

**Article 146<sup>261</sup>****Access to Courts**

In accordance with the rights enumerated in article 25, paragraphs 1-7 and paragraphs 8-9, and articles 26-28:

1. A person entitled to international protection shall have free access to the courts of law on the territory of all States Parties, as well as in all instances in which such a person is within the jurisdiction or effective control of a State.
2. A person entitled to international protection shall enjoy in the State Party in which he or she has his or her habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance.

**Article 147<sup>262</sup>****Rationing**

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, persons entitled to international protection shall be accorded the same treatment as nationals.

**Article 148<sup>263</sup>****Public Relief**

Persons entitled to international protection lawfully staying in the territory of States Parties shall have the right to the same treatment with respect to public relief and assistance as is accorded to their nationals.

<sup>258</sup> *Id.* art. 13 (modified by author).

<sup>259</sup> *Id.* art. 14 (modified by author).

<sup>260</sup> *Id.* art. 15 (modified by author).

<sup>261</sup> *Id.* art. 16 (modified by author).

<sup>262</sup> *Id.* art. 20 (modified by author).

<sup>263</sup> *Id.* art. 23 (modified by author).

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# 04

## Administrative Measures Under International Protection

### Article 149<sup>264</sup>

#### Administrative Assistance

1. When the exercise of a right by a person entitled to international protection would normally require the assistance of authorities of a foreign country to whom she or he cannot have recourse, State Parties in whose territory she or he is residing shall arrange that such assistance be afforded to her or him by their own authorities or by an international authority.
2. The authority or authorities mentioned in paragraph 1 of the present article shall deliver or cause to be delivered under their supervision to individuals such documents or certifications as would normally be delivered to foreign nationals by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to foreign nationals by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this article shall be without prejudice to articles 150 and 160.

### Article 150<sup>265</sup>

#### Identity Papers

States Parties shall issue identity papers to any person entitled to international protection in their territory who does not possess a valid identity document.

### Article 151<sup>266</sup>

#### Fiscal Charges

1. States Parties shall not impose upon persons entitled to international protection duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
2. Nothing in the above paragraph shall prevent the application to persons entitled to international protection of the laws and regulations concerning charges in respect of the issue to foreign nationals of administrative documents including identity papers.

### Article 152<sup>267</sup>

#### Transfer of Assets

1. A State Party shall, in conformity with its laws and regulations, permit persons entitled

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<sup>264</sup> *Id.* art. 25 (modified by author).

<sup>265</sup> *Id.* art. 27 (modified by author).

<sup>266</sup> *Id.* art. 29 (modified by author).

<sup>267</sup> *Id.* art. 30 (modified by author).

- to international protection to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement. Any restrictions on the transfer assets may not exceed those placed on their nationals in similar situations.
2. States Parties shall give sympathetic consideration to the application of persons entitled to international protection for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

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# 05

## International Refuge<sup>268</sup>

### Article 153

#### Applicability of International Refuge

For the purposes of this chapter a “person eligible for international refuge” means a refugee or other forced migrant in respect of whom substantial grounds have been shown for believing that the person concerned is entitled to international protection. Such persons shall be granted “international refuge status” following either individual assessment or *prima facie* group-based determination of their claim to international protection.

### Article 154<sup>269</sup>

#### General Obligations Toward Beneficiaries of International Refuge

The granting of international refuge status shall be without prejudice to recognition of refugee status under the 1951 Refugee Convention or any other Treaty, Declaration, or regional instrument pertaining to the status of refugees.

### Article 155<sup>270</sup>

#### Duration of International Refuge and Cessation

1. The cessation of international refuge status does not necessarily imply return:
  - (a) In situations of protracted displacement States shall as far as possible facilitate the integration and naturalization of beneficiaries of international refuge. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.<sup>271</sup>
  - (b) Regardless of provisions facilitating naturalization, States shall provide persons under international refuge with permanent residency status or an equivalent legal status after a fixed period not exceeding six years. At this time, it should be assumed that the need for protection still remains and local settlement and integration should be more fully promoted.<sup>272</sup> Time spent lawfully present under international refuge shall

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<sup>268</sup> This section follows the analysis of international protection in JANE McADAM, *COMPLEMENTARY PROTECTION IN INTERNATIONAL REFUGEE LAW* (2007).

<sup>269</sup> Council Directive 2001/55, *supra* note 237, art. 3 (modified by author).

<sup>270</sup> Council Directive 2001/55, *supra* note 237, arts. 4, 6; Council Directive 2011/95, *supra* note 229, art. 16 (modified by author).

<sup>271</sup> 1951 Refugee Convention, *supra* note 5, art. 34 (modified by author).

<sup>272</sup> European Council on Refugees and Exiles, *Position on Temporary Protection in the Context of the Need for a Supplementary Refugee Definition* (Mar. 1, 1997), <http://www.refworld.org/publisher/ECRE/POSITION,,3c0264b87,0.html>, [https://perma.cc/X5TY-9UDC].

be favorably considered for the purposes of fulfilling naturalization and permanent residency requirements. When individuals are granted international refugee status, time spent under interim protection shall be counted toward the maximum duration for which international refugee status may apply.

- (c) States requiring support for resettlement programs and actions related to the integration of persons enjoying subsidiary whose stay is of a lasting and stable nature shall have access to financial and technical assistance provided by the Responsibility Sharing Mechanism” and the “Global Refugee Fund” as established by Articles 211 and 213 of the present Convention.
2. A person may cease to be eligible for international refugee when the circumstances which led to the granting of international refugee status have ceased to exist or have changed to such a degree that protection is no longer required, within the fixed period noted in paragraph 1 of the present article.
  3. In applying paragraph 2 of the present article, States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for international refugee no longer faces a real risk of serious harm.
  4. Paragraph 2 of the present article shall not apply to a beneficiary of international refugee who is able to invoke compelling reasons arising out of previous fear of persecution or risk of serious harm for refusing to avail himself or herself of the protection of the State of origin or, being a stateless person, of the State of former habitual residence.

#### **Article 156<sup>273</sup>**

##### **Exclusion**

1. A person shall not be eligible for international refugee when there are serious reasons for considering that:
  - (a) He or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) He or she has committed a serious non-political crime outside the State of reception prior to his or her admission to that State. The severity of the expected harm is to be weighed against the nature of the criminal offense of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators;
  - (c) He or she has been guilty of acts contrary to the purposes and principles of the United Nations;
  - (d) There are reasonable grounds for regarding him or her as a danger to the security of the host State or, having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of that State.
2. The grounds for exclusion referred to in paragraph 1 of the present article shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality.
3. An individual excluded from the benefit of international refugee under the provisions of this article shall be entitled to submit evidence to clear herself or himself, and to appeal to and be represented for the purpose before a competent authority or a person or persons specially designated by the competent authority.<sup>274</sup>

<sup>273</sup> Council Directive 2001/55, *supra* note 237, art. 28 (modified by author); Council Directive 2011/95, *supra* note 229, art. 17 (modified by author).

<sup>274</sup> Council Directive 2001/55, *supra* note 237, art. 29 (modified by author).

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# 06

## Obligations of States Towards Persons Enjoying International Refuge

### Article 157<sup>275</sup>

#### Residence

As soon as possible after international protection has been granted, States shall issue to beneficiaries of international refuge status and their family members a residence permit which must be valid for at least three years and renewable, unless compelling reasons of national security or public order otherwise require.

### Article 158<sup>276</sup>

#### Freedom of Movement

Beneficiaries of international refuge status shall have the right to choose their place of residence and to move freely within the territory of States Parties, subject to any regulations applicable to foreign nationals generally in the same circumstances.

### Article 159<sup>277</sup>

#### Information

States Parties shall provide beneficiaries of international refuge, as soon as possible after international refuge status has been granted, with access to information, in a language that they understand or are reasonably supposed to understand, on the rights and obligations relating to that status.

### Article 160<sup>278</sup>

#### Travel Documents

1. States Parties shall issue to beneficiaries of international refuge status who are unable to obtain a national passport, documents which enable them to travel outside their territory, unless compelling reasons of national security or public order otherwise require. Such documents shall comply with international standards governing the issue and recognition of travel documents. States Parties shall endeavor to provide machine readable, bio-metric travel documents to facilitate the identification of those entitled to international protection and to facilitate their mobility. States requiring such travel documents for entrance shall assist other States in making the technology affordable and available.
2. States Parties shall recognize the validity of travel documents issued in accordance with this article. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the States Parties in the same way as if they had been issued pursuant to this article.
3. Each State Party undertakes to re-admit the holder of a travel document issued by it in accordance with this article at any time during the period of its validity.

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<sup>275</sup> Council Directive 2011/95, *supra* note 229, art. 24 (modified by author).

<sup>276</sup> 1951 Refugee Convention, *supra* note 5, art. 26 (modified by author).

<sup>277</sup> Council Directive 2011/95, *supra* note 229, art. 22 (modified by author).

<sup>278</sup> *Id.* art. 25 (modified by author).

**Article 161<sup>279</sup>****Employment**

1. Beneficiaries of international refuge lawfully staying in the territory of States Parties shall have the right to the same treatment as is accorded to nationals as regards the right to engage in wage-earning employment immediately after international refuge status has been granted; or if the claim for international refuge remains undecided, no more than three months after the date of application for international refuge status has been filed or lodged.
2. Restrictive measures imposed on foreign nationals or the employment of foreign nationals for the protection of the national labor market shall not be applied to beneficiaries of international refuge, with the exception of general measures limiting the employment of foreign nationals in government service or in occupations specifically related to the fundamental national interests of the State.
3. States shall accord to beneficiaries of international refuge treatment as favorable as possible, and, in any event, not less favorable than that accorded to foreign nationals generally in the same circumstances, with respect to activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counseling services afforded by employment offices.<sup>280</sup>
4. The general law in force in States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply. To this end, persons enjoying international refuge shall at the minimum enjoy the rights articulated in articles 58, 59, 60 paragraph 1, and 65.

**Article 162<sup>281</sup>****Self-Employment**

Beneficiaries of international refuge lawfully in the territory of States Parties shall have the right to the same treatment as is accorded to nationals as regards the right to engage on their own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

**Article 163<sup>282</sup>****Liberal Professions**

1. Beneficiaries of international refuge lawfully staying in the territory of States Parties who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, shall be accorded treatment as favorable as possible and, in any event, not less favorable than that accorded to foreign nationals generally in the same circumstances.
2. States Parties shall promote to the fullest extent compatible with their national laws, the translation of degrees and credentials held by beneficiaries of international refuge into comparable credentials recognized by the State. When relevant, each State shall provide beneficiaries of international refuge with the opportunity to sit for qualifying exams that are relevant to their degree level.<sup>283</sup>

<sup>279</sup> 1951 Refugee Convention, *supra* note 5, art. 17 (modified by author); aspects incorporated from 2015 SIPA Model Mobility Treaty Workshop Memo, *supra* note 235. See Council Directive 2011/95, *supra* note 229.

<sup>280</sup> Council Directive 2011/95, *supra* note 229, art. 26 (modified by author).

<sup>281</sup> 1951 Refugee Convention, *supra* note 5, art. 18 (modified by author).

<sup>282</sup> *Id.* art. 19 (modified by author).

<sup>283</sup> 2015 SIPA Model Mobility Treaty Workshop Memo, *supra* note 235.

**Article 164**<sup>284</sup>**Housing**

In so far as housing is regulated by laws or regulations or is subject to the control of public authorities, States Parties shall accord to beneficiaries of international refugee status in their territory treatment as favorable as possible, and, in any event, not less favorable than that accorded to foreign nationals legally resident in their territory.

**Article 165**<sup>285</sup>**Education**

1. All minors granted international refugee status shall have the right to primary and secondary education on the basis of equality of treatment with nationals of the State concerned. States may stipulate that such access must be confined to the state education system.
2. States Parties shall accord to beneficiaries of international refugee status treatment as favorable as possible, and, in any event, not less favorable than that accorded to foreign nationals, with respect to education other than primary and secondary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.<sup>286</sup>

**Article 166****Access to Health Care**

1. Beneficiaries of international refugee status shall not be refused emergency medical care, including reproductive health care.
2. States Parties shall adopt measures to ensure that beneficiaries of international refugee status are provided with access to non-emergency health care that supports public health, such as immunization programs and treatment of communicable diseases.
3. States Parties shall adopt measures to ensure that beneficiaries of international refugee status receive, following a set period if there is one, the same treatment as nationals with regard to the provision of medical care.

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<sup>284</sup> 1951 Refugees Convention, *supra* note 5, art. 21 (modified by author) (baseline comes from Council Directive 2011/95, *supra* note 229).

<sup>285</sup> *Id.* art. 22 (modified by author).

<sup>286</sup> Council Directive 2011/95, *supra* note 229.



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# 07

## Obligations of States Towards Persons Enjoying Interim Protection<sup>287</sup>

### Article 167<sup>288</sup>

#### Applicability of Interim Protection

1. For the purposes of this chapter “interim protection” means a procedure of exceptional character to provide immediate and temporary protection, in the event of the presence, arrival, or imminent arrival of a large number<sup>289</sup> of forced migrants who are unable to remain within or return to their State of origin because of the threat of serious harm of a recognizably limited duration.
2. States Parties may extend interim protection to groups not covered by paragraph 1 of the present article, in particular if there is also a clear and justified risk that the procedure for determining eligibility for international refugee status will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.
3. Where, in the case of a sudden or mass arrival of forced migrants as described by paragraph 2 of the present article, or for other compelling reasons, a State experiences difficulties in granting or continuing to grant the benefits of international protection, other States Parties, in a spirit of international solidarity, shall take appropriate measures individually, jointly, or through the United Nations or other international bodies, to share equitably the responsibility of that State.<sup>290</sup>

### Article 168<sup>291</sup>

#### General Obligations Toward Beneficiaries of Interim Protection

1. Interim protection shall be without prejudice to recognition of refugee status under the Geneva Convention or any other Treaty, Declaration, or regional instrument pertaining to the status of refugees; it shall also be without prejudice to recognition of international refugee status under the conditions provided for in the present chapter.
2. The establishment, implementation and cessation of interim protection shall be the subject of regular consultations with the UNHCR and other relevant international organizations.

### Article 169<sup>292</sup>

#### Duration of Interim Protection and Cessation

1. The duration of interim protection shall be one year. Unless ended under the cessation terms of this article, it may be extended automatically by six monthly periods for a maximum of one year.

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<sup>287</sup> See generally Guy S. Goodwin-Gill, *The Challenges to International Refugee Law in the Current Crisis*, 28 INT’L J. OF REFUGEE L. 552 (2016).

<sup>288</sup> Council Directive 2001/55, *supra* note 237, art. 3 (modified by author).

<sup>289</sup> *Id.*

<sup>290</sup> U.N. General Assembly, *supra* note 255, art. 5; *Draft Convention on Territorial Asylum*, *supra* note 254, art. 5 (modified by author).

<sup>291</sup> Council Directive 2001/55, *supra* note 237, art. 3 (modified by author).

<sup>292</sup> *Id.* arts. 4, 6. See also Council Directive 2011/95, *supra* note 229, art. 16 (modified by author).

2. The end of interim protection does not necessarily imply return. No later than two years after the grant of interim protection status, States Parties shall review the situation and, if the need for international protection continues, they shall grant international refugee status to the individuals concerned.<sup>293</sup>
3. A forced migrant may cease to be eligible for interim protection when the circumstances which led to the granting of interim protection status have ceased to exist or have changed to such a degree that protection is no longer required, within the fixed period noted in paragraph 1 of the present article.
4. In applying paragraph 3 of the present article, States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for interim protection no longer faces a real risk of serious harm.
5. Paragraph 3 of the present article shall not apply to a beneficiary of interim protection who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the State of origin or, being a stateless person, of the State of former habitual residence.

#### **Article 170<sup>294</sup>**

##### **Exclusion**

1. States may exclude a person from interim protection if there are serious reasons for considering that:
  - (a) He or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) He or she has committed a serious non-political crime outside the State of reception prior to his or her admission to that State as a person enjoying interim protection. The severity of the expected harm is to be weighed against the nature of the criminal offense of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators;
  - (c) He or she has been guilty of acts contrary to the purposes and principles of the United Nations;
  - (d) There are reasonable grounds for regarding him or her as a danger to the security of the host State or, having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the host State.
2. The grounds for exclusion referred to in paragraph 1 of the present article shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality.
3. Persons who have been excluded from the benefit of interim protection by a State under the provisions of this article shall be entitled to mount a legal challenge in the State concerned.<sup>295</sup>

<sup>293</sup> ECRE, *supra* note 272, ¶ 30.

<sup>294</sup> Council Directive 2001/55, *supra* note 237, art. 28 (modified by author).

<sup>295</sup> *Id.* art. 29 (modified by author).

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# 08

## Obligations of States towards persons enjoying Interim Protection

### Article 171<sup>296</sup>

#### Residence

1. States Parties shall adopt the necessary measures to provide persons enjoying interim protection with residence permits for the entire duration of the protection. Documents or other equivalent evidence shall be issued for that purpose.
2. Whatever the period of validity of the residence permits referred to in paragraph 1 of the present article, the treatment granted by States to persons enjoying interim protection may not be less favorable than that set out in articles 141- 152 and articles 172-176.
3. States shall, if necessary, provide persons to be admitted to their territory for the purposes of interim protection with every facility for obtaining the necessary visas, including transit visas. Formalities must be reduced to a minimum because of the urgency of the situation. Visas should be free of charge or their cost reduced to a minimum.

### Article 172<sup>297</sup>

#### Freedom of Movement

Beneficiaries of interim protection shall have the right to choose their place of residence and to move freely within the territory of States Parties, subject to any regulations applicable to foreign nationals generally in the same circumstances.

### Article 173<sup>298</sup>

#### Information

States shall provide persons enjoying interim protection with a document, in a language likely to be understood by them, in which the provisions relating to interim protection and which are relevant to them are clearly set out.

### Article 174<sup>299</sup>

#### Employment

1. Persons enjoying interim protection shall have the right to engage in employed or self-employed activities for a period not exceeding that of interim protection, subject to rules applicable to the profession, immediately after interim protection has been granted; or if the claim for interim protection remains undecided, no more than three months after the date of application for interim protection has been filed or lodged. States Parties shall authorize persons enjoying interim protection to engage in activities such as educational opportunities for adults, vocational training and practical workplace experience.
2. The general law in force in each State Party applicable to remuneration, access to social

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<sup>296</sup> *Id.* art. 8 (modified by author).

<sup>297</sup> 1951 Refugee Convention, *supra* note 5, art. 26 (modified by author).

<sup>298</sup> Council Directive 2001/55, *supra* note 237, art. 9 (modified by author).

<sup>299</sup> *Id.* art. 12 (modified by author).

security systems relating to employed or self-employed activities and other conditions of employment shall apply. To this end, persons enjoying interim protection shall at the minimum enjoy the rights articulated in articles 58, 59, 60 paragraph 1, and 65.

**Article 175<sup>300</sup>**

**Housing**

In so far as housing is regulated by laws or regulations or is subject to the control of public authorities, States Parties shall accord to beneficiaries of interim protection status in their territory treatment as favorable as possible, and, in any event, not less favorable than that accorded to foreign nationals legally resident in their territory.

**Article 176<sup>301</sup>**

**Education**

1. All minors granted interim protection shall have the right to primary and secondary education on the basis of equality of treatment with nationals of the State concerned. States may stipulate that such access be confined to the public education system.
2. States Parties may allow adults enjoying interim protection access to the general education system.

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<sup>300</sup> 1951 Refugee Convention, *supra* note 5, art. 21. See also Council Directive 2011/95, *supra* note 229, art. 21 (modified by author).

<sup>301</sup> Council Directive 2001/55, *supra* note 237, art. 14 (modified by author).

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# 09

## Return and Measures after International Protection has Ended

### Article 177<sup>302</sup>

#### Voluntary Returns

1. States Parties shall take the measures necessary to make possible the voluntary return of persons enjoying international protection whose need for international protection has ended. In collaboration with the State of origin, States Parties shall ensure that the provisions governing voluntary return of persons enjoying international protection facilitate their return in safety and dignity, with due respect for human rights.<sup>303</sup>
2. The State of origin, on receiving back such persons, shall facilitate their reintegration. Persons enjoying international protection who return to their country shall in no way be penalized for having left it for any of the reasons giving rise to their need for international protection.<sup>304</sup>
3. Persons enjoying international protection who freely decide to return to their State of origin shall be given every possible assistance by host States, the State of origin, voluntary agencies and international and intergovernmental organizations to facilitate their return.<sup>305</sup>
4. States Parties shall, in collaboration with UNHCR, ensure that the decision of those persons to return is taken in full knowledge of the facts. States Parties, in cooperation with UNHCR, may provide for exploratory visits.
5. For such time as the international protection has not ended, States Parties shall, on the basis of the circumstances prevailing in the State of origin, give favorable consideration to requests for return to the host State from persons who have enjoyed international protection and exercised their right to a voluntary return.

### Article 178<sup>306</sup>

#### Non-Voluntary Returns

1. States Parties shall take the measures necessary to ensure that the enforced return of persons whose need for international protection has ended and who are not eligible for admission is conducted with due respect for human dignity.
2. In cases of enforced return, States Parties shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.
3. Any type of return, including deportation, must respect the fundamental principle of the best interests of the child.<sup>307</sup>
4. States shall take the necessary measures concerning the conditions of residence of persons who have enjoyed international protection and who cannot, in view of their state of health, reasonably be expected to travel. They shall not be expelled so long as that situation continues.

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<sup>302</sup> *Id.* art. 21 (modified by author).

<sup>303</sup> Incorporating language from OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, *supra* note 235, art. V(2), with reference to inter-state collaboration.

<sup>304</sup> *Id.* art. V(3-4) (modified by author).

<sup>305</sup> *Id.* art. V(5), (modified by author).

<sup>306</sup> Council Directive 2001/55, *supra* note 237, arts. 22, 23 (modified by author).

<sup>307</sup> U.N. Secretary-General, In Safety and Dignity: Addressing Large Movements of Refugees and Migrants, *supra* note 126, ¶ 92.

# Assistance and Protection of Migrant Victims of Trafficking and Migrants Caught in Countries in Crisis<sup>308</sup>

ch.v

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# 01

## General Provisions

### Article 179<sup>309</sup>

#### Purpose

The purposes of this Chapter are:

1. To prevent and combat the international trafficking in persons, paying particular attention to minors;
2. To protect and assist migrants who are victims of such trafficking, with full respect for their human rights;
3. To establish standards for assisting migrants caught in countries in crisis;
4. To promote cooperation among States Parties in order to meet those objectives.

### Article 180<sup>310</sup>

#### Scope and Definitions

For the purposes of this Chapter:

1. The term "trafficking in persons" shall mean:
  - (a) The recruitment, transportation, transfer, harboring or receipt of a person who is a migrant, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;
  - (b) Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
  - (c) The consent of a victim of trafficking in persons to the intended exploitation set forth in paragraph 1 of this article shall be irrelevant where any of the means set forth in paragraph 1 have been used;
  - (d) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph 1 of this article.
2. The term "migrants in countries in crisis" shall apply to:
 

Any person outside her or his State of origin, or in the case of a stateless person, her or his State of former habitual residence, who is at risk of serious harm due to being caught in a country experiencing a crisis.<sup>311</sup>
3. The term "crisis" shall apply to:
 

Events constituted by natural disasters, such as hurricanes, earthquakes, or floods, or conflict, such as civil unrest, generalized violence, international or internal armed conflict, whose magnitude demands a significant humanitarian response by the authorities of the

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<sup>308</sup> This chapter reflects the research and drafting of Kiran Banerjee and the many useful suggestions of Emma Borgnäs, Daniel Naujoks, and Susan Martin.

<sup>309</sup> G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 2 (Nov. 15, 2000) (modified by author).

<sup>310</sup> *Id.* art. 3 (modified by author).

<sup>311</sup> Int'l. Org. for Migration [IOM], *Migrants in Countries in Crisis Working Group Concept Note* (Feb 14, 2014) [hereinafter *MICIC Concept Note*] (modified by author).

country experiencing a crisis and/or by the international community. A crisis can affect the whole country or parts of it..

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# 02

## Protection of Migrant Victims of Trafficking

### Article 181<sup>312</sup>

#### Assistance to and Protection of Migrant Victims of Trafficking in Persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall provide the basic benefits and services described below to victims of trafficking in persons in their territory or jurisdiction without regard to the immigration status of such victims or the ability or willingness of the victim to participate in the investigation or prosecution of his or her alleged trafficker.<sup>313</sup>
3. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
  - (a) Information on relevant court and administrative proceedings;
  - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.
4. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
  - (a) Appropriate housing;
  - (b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
  - (c) Medical, psychological and material assistance;
  - (d) Employment, educational and training opportunities.
5. In appropriate cases and to the extent possible, assistance shall be provided to the accompanying dependents of the victim.<sup>314</sup>
6. Victims of trafficking in persons shall not be held in any detention facility as a result of their status as victims or their immigration status.<sup>315</sup>
7. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care. All assistance services shall be provided on a consensual and informed basis and while taking due account of the special needs of children and other persons in a vulnerable position.<sup>316</sup>

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<sup>312</sup> G.A. Res. 55/25, *supra* note 309, arts. 6–7 (modified by author).

<sup>313</sup> U.N. Off. on Drugs and Crime, Model Law Against Trafficking Persons, art. 20(1), U.N. Sales No. E.09.V.11 (2009) (modified by author).

<sup>314</sup> *Id.* art. 20(3) (modified by author).

<sup>315</sup> *Id.* art. 20(4) (modified by author).

<sup>316</sup> *Id.* art. 20(5) (modified by author).



8. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.
9. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

#### **Article 182<sup>317</sup>**

##### **Child Victims of Trafficking in Persons**

In addition to any other guarantees provided for in this Convention:

1. Child victims, especially infants, shall be given special care and attention;
2. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age;
3. Assistance to child victims shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care;
4. If the victim is an unaccompanied minor the State party shall: Appoint a legal guardian to represent the interests of the child; Take all necessary steps to establish his or her identity and nationality; Make every effort to locate his or her family when this is in the best interest of the child;
5. Information may be provided to child victims through their legal guardian or, in case the legal guardian is the alleged offender, a support person;
6. Child victims shall be provided with information in a language that they use and understand and in a manner that is understandable to them.

#### **Article 183<sup>318</sup>**

##### **Non-liability and Non-punishment of Victims of Trafficking in Persons**

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

#### **Article 184<sup>319</sup>**

##### **Status of Migrant Victims of Trafficking in Persons in Receiving States**

1. In addition to taking measures pursuant to articles 181 to 183 of this Chapter, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

#### **Article 185<sup>320</sup>**

##### **Repatriation of Migrant Victims of Trafficking in Persons**

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that

<sup>317</sup> *Id.* art. 22 (modified by author).

<sup>318</sup> *Id.* art. 10 (modified by author).

<sup>319</sup> G.A. Res. 55/25, *supra* note 309, arts. 7-8 (modified by author).

<sup>320</sup> *Id.* art. 8 (modified by author).

- person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
  3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
  4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
  5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
  6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

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# 03

## Protection of Migrant Victims of Trafficking

### Article 186<sup>321</sup>

#### General Responsibilities of States

1. States Parties acknowledge that, in accordance with general international law, States experiencing conflicts or natural disasters have responsibilities towards those present in their territory, including migrants, regardless of their immigration status.
2. States Parties recognize that, in accordance with general international law, States of origin also bear responsibility for the safety and welfare of their nationals, even when those nationals are living, working, traveling, or transiting in other countries.

### Article 187<sup>322</sup>

#### Facilitating Internal Mobility in Countries in Crisis

1. Where protection cannot be provided locally, the host State should facilitate the immediate relocation of migrants in countries in crisis to other parts of the host State where they may escape harm during a conflict or natural disaster.

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<sup>321</sup> IOM, Migrants in Countries in Crisis Initiative Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster, at 25-26, Guideline 3 (2016) (modified by author).

<sup>322</sup> *Id.* at 33-34, Guideline 10 (modified by author).

2. In host States where the ability of migrants in countries in crisis to move to safety may be limited by visa and work permits that restrict her or his to particular geographic areas or employers, States should waive restrictions or lift penalties for violating restrictions during a conflict or natural disaster on humanitarian grounds and to improve such persons access to help.

#### **Article 188<sup>323</sup>**

##### **Facilitating International Mobility in Countries in Crisis**

1. Where protection cannot be effectively provided to migrants in countries in crisis by a host State experiencing a conflict or natural disaster, efforts should be made to facilitate the temporary evacuation of individuals to States of transit or their direct repatriation to their State of origin. In doing so, States must ensure that individuals who may face persecution, or, as appropriate, serious harm or other life-threatening situations in their States of origin or other States, including refugees and other forced migrants, are protected against refoulement in manner consistent with the provisions of articles 138-140.
2. Host States should facilitate access to valid identity and travel documents for migrants in countries in crisis seeking to cross international borders to escape harm during a conflict or natural disaster, in particular by allowing States of origin to provide consular assistance to their nationals, or in the case of stateless persons, by supporting the relevant international authorities in providing similar assistance.<sup>324</sup>
3. Host States, and States of transit that migrants in countries in crisis may be compelled to enter while seeking safety during a conflict or natural disaster, should minimize the barriers individuals may face in meeting visa requirements, securing immigration exit visas, paying immigration fees or penalties for overstay, and fulfilling entry requirements.

#### **Article 189<sup>325</sup>**

##### **Repatriation to State of Origin**

States Parties acknowledge that, in accordance with general international law, the State of origin of a migrant in a country in crisis holds special responsibility for the provision of assistance and effective protection. Accordingly, the State of origin should provide for appropriate measures, through consular action and negotiations with the host State or states of transit, to assist its nationals as well as support their voluntary repatriation when necessary.

#### **Article 190**

##### **Emergency Temporary Protection**

In situations in which a crisis arising from a conflict or natural disaster presents an ongoing threat to a person in a host State and requires them to cross international borders to escape harm, States of transit should temporarily provide interim protection on humanitarian grounds to migrants in countries in crisis, pending their safe and humane repatriation to their State of origin or their ability to voluntarily return to the host State.

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<sup>323</sup> *Id.*

<sup>324</sup> *Id.* at 26, Sample Practices from Guideline 3 (modified by author).

<sup>325</sup> *MICIC Concept Note, supra* note 311.

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# 04

## Prevention of Trafficking, Cooperation and other Measures

### Article 191<sup>326</sup>

#### Prevention of International Trafficking in Persons

1. States Parties shall establish comprehensive policies, programs and other measures:
  - (a) To prevent and combat trafficking in persons;
  - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavor to undertake measures such as research, information and media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programs and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

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<sup>326</sup> G.A. Res. 55/25, *supra* note 309, art. 9 (modified by author).



# Family Reunification<sup>327</sup>

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# 01

## Scope and Definitions

### Article 192

1. Family unity is a widely recognized legitimate reason for migration and is a central right protected by international human rights and humanitarian law. Numerous international legal instruments contain explicit references to the right to family life.<sup>328</sup>
2. Family reunification is equally widely recognized as an essential feature of both immigration and refugee law.<sup>329</sup>

### Article 193

States Parties, recognizing that the family is a natural and fundamental group unit of society and is entitled to protection by society and the state, shall take appropriate measures to ensure the protection of the unity of the families.

For the purposes of the present Convention, family<sup>330</sup> shall include:

1. Members of the Nuclear Family, including:
  - (a) The sponsor's spouse;
  - (b) The sponsor's spouse; or the sponsor's unmarried partner, with whom the sponsor is in a duly attested stable long-term relationship, in accordance with the national law of the state of origin;
  - (c) The minor children, including adopted children, of the sponsor and/or of his/her spouse;
  - (d) The minor children, including adopted children, of the sponsor where the sponsor has full or partial custody and, where custody is shared, provided the other party sharing custody has given his or her consent;
  - (e) The minor children, including adopted children, of the sponsor's spouse, where the spouse has full or partial custody and, where custody is shared, provided the other party sharing custody has given his or her consent; or

<sup>327</sup> This chapter has benefitted from the research and drafting of Hila Wesa, with suggestions from Yasmine Ergas, Diego Acosta and Donald Kerwin.

<sup>328</sup> Examples include: Universal Declaration of Human Rights, *supra* note 244, art. 16 (which provides that anyone has the right to marry and found a family); International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171; ICESCR, *supra* note 109; European Convention for the Protection of Human Rights, *supra* note 252, art. 8 (providing that everyone has the right to respect for his private and family life); European Social Charter, art. 19, (May 3, 1996), 529 U.N.T.S. 89 (providing that states must make every effort to facilitate the family reunion of migrant workers resident in a foreign country); European Convention on the Legal Status of Migrant Workers, art. 12, (Nov. 24, 1997), E.T.S. 93 (providing for family reunion); and the United Nations Convention on the Rights of the Child, *supra* note 18 (stressing the protection of the children's best interests). In some jurisdictions family reunification is recognized as an individual subjective right. See in the EU's context among others: Directive 2004/38, of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, 2004 O.J. (L 158) 77; Directive 2003/86, *supra* note 330; Directive 2009/50, of the Council of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, 2009 O.J. (L155) 17. This is implemented as a right in all domestic laws in twenty-five countries in the EU bound by these directives. Family reunification as a right can also be found in the laws of certain Latin American countries including Argentina, Law No. 25871, arts. 3(d) & 10, Jan. 20, 2004, B.O. (Arg.); Bolivia, Law No. 370, art. 12(II)(8), May 8, 2013, G.O. (Bol.); Brazil, Migration Law No. 13.445, art. 4(3), May 24, 2017; Peru, Legislative Decree No. 1350/2017, art. 37, Jan. 7, 2017; Uruguay, Art. 8 Law No. 18.250, art. 8, Jan. 6, 2008. This is also the case in the Residency Agreement for Nationals of MERCOSUR Member States, Bolivia, and Chile, art. 9, Dec. 6, 2002, MERCOSUR/RMI/CT/ACTA no. 04/02.

<sup>329</sup> See Zoya Gubernskaya & Joanna Dreby, US Immigration Policy and the Case for Family Unity, 5 J. ON MIGRATION AND HUM. SECURITY 417 (2017).

<sup>330</sup> Directive 2003/86, of the Council of the European Union of 22 September 2003 on the Right to family reunification, art. 4, 2003 O.J. (L 251) 14-15 (EC).

- (f) The adult unmarried children of the sponsor or his or her spouse, including adopted children, where they are objectively unable to provide for their own needs on account of their state of health, disability or other analogous circumstances.
  - (g) In cases of conflicts of interpretation arising from different nationalities, States Parties shall adopt an interpretation most in line with the right to family life.
2. Members of the Extended Family, defined as:
- (a) The parents and other first-degree relatives in the direct ascending line of the sponsor or his or her spouse;
  - (b) Any other person<sup>331</sup> who is dependent on the sponsor, or his/her spouse, and is recognized as such by the applicable legislation of the State of origin and the host State, or applicable bilateral or multilateral agreements between the States concerned, taking into consideration the provisions in paragraph 1 (g) of the present Article.

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# 02

## Visitors, Tourists and Students

### Article 194

#### Visitors and Tourists

Unless the host State's applicable immigration legislation provides otherwise, third country nationals in tourist or visitor status do not qualify for family reunification privileges in the host State.

### Article 195

#### Students

A third country national in student status may ordinarily apply to be joined by his or her Nuclear Family members in the host State provided the following conditions are satisfied:

1. The sponsoring student must hold a residence permit valid for at least one year;<sup>332</sup>
2. The sponsoring student shall provide proof of sufficient resources to cover the family's living expenses, including housing and medical insurance, without resort to the host State's public welfare system.
3. Host States may provide work visas to spouses.

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<sup>331</sup> See Rights and Guarantees of Children in the Context of Migration and/or in Need of Inter-national Protection, Advisory Opinion OC-21/14, Inter. Am. Ct. H.R. at 105 ¶ 272 (Aug. 19, 2014). See also Committee on the Rights of the Child, General Comment No. 7: Implementing Child Rights in Early Childhood, ¶ 15, 19, U.N. Doc. CRC/C/GC/ 7/Rev.1 (Sept. 20, 2006) ("The Committee recognizes that "family" here refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests. [...] The Committee notes that in practice family patterns are variable and changing in many regions, as is the availability of informal networks of support for parents, with an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children."); U.N. Human Rights Committee, CCPR General Comment No. 19: (The Family), Protection of the Family, the Right to Marriage and Equality of the Spouses, ¶ 2, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), (May 27, 2008). ("The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition"); U.N. Human Rights Committee, CCPR General Comment No 16: Right to Privacy (Article 17), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), (Apr. 8, 1998). ("Regarding the term "family", the objectives of the Covenant require that for purposes of Article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned").

<sup>332</sup> Directive 2003/86, *supra* note 330, art. 3.



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# 03

## Migrant Workers, Investors and Residents

### Article 196

States Parties shall take appropriate measures to ensure the protection of the unity of the families, particularly the Nuclear Families, of migrant workers, migrant investors and migrant residents.<sup>333</sup>

### Article 197

States Parties shall take the necessary measures that fall within their competence to facilitate the reunification of migrant workers with their Nuclear Families provided the respective migrant workers satisfy the following conditions:

1. The sponsoring migrant resident or migrant worker must hold a residence permit valid for at least one year;
2. The sponsoring migrant resident or migrant worker shall provide proof of sufficient resources to cover his/her family's living expenses, including housing and medical insurance, without resort to the host State's public welfare system, unless the host state extends rights and benefits to the family members of such workers;
3. Any other relevant conditions as prescribed by the applicable laws of the host State.

### Article 198

States Parties shall, on humanitarian grounds, favorably consider granting equal treatment to Extended Family members of migrant workers that meet the conditions of Article 119.

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<sup>333</sup> G.A. Res. 45/158, *supra* note 12, art. 44; MW, *supra* note 12, art. 44.

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# 04

## Refugees, Forced Migrants, and Asylum Seekers<sup>334</sup>

### Article 199

1. States Parties shall take appropriate and expedited measures to ensure the active protection of the family members of refugees and other forced migrants. In particular, States Parties shall take measures to facilitate the reunification of:
  - (a) The Nuclear Families of beneficiaries of international protection who cannot lawfully be returned to their State of origin;<sup>335</sup> and
  - (b) The Extended Families of beneficiaries of international protection who cannot lawfully be returned to their State of origin.
2. States Parties shall take measures to allow the children of beneficiaries of international protection to apply for derivative international protection and shall allow parents of children who are beneficiaries of international protection to apply for derivative international protection.
3. Resettlement and family reunification efforts taken in pursuance of this article should prioritize the discretion and interests of family members.

### Article 200

The provisions of the present Convention pertaining to refugees and other beneficiaries of international protection are without prejudice to any rules granting refugee status or international protection to their family members, respectively. Such family members acquire all the rights pertaining to refugees and those receiving international protection.

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<sup>334</sup> Refugees, as defined by the *1951 Convention relating to the Status of Refugees*, and other forced migrants accorded international protection in accordance with the international principle of *non-refoulement*, have a right to be reunited with their family in their country of asylum. While the Refugee Convention is silent on the question of family reunification, the *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons* provides that “[states] take the necessary measures for the protection of the refugee’s family, especially with a view to [...] ensuring that the unity of the refugee’s family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.” See U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, U.N. Doc A/CONF.2/108/Rev.1, (July. 25, 1951). UNHCR’s Executive Committee has furthermore concluded that respect for family unification is a minimum basic human standard that must be provided to all forced migrants, including persons benefiting from interim protection. See Kate Jastram, *Family Unity: The New Geography of Family Life*, <http://www.migrationpolicy.org/article/family-unity-new-geography-family-life>, [<https://perma.cc/43QB-4GWJ>].

<sup>335</sup> G.A. Res. 45/158, *supra* note 12, art. 44; MW, *supra* note 12, art. 44.



# Treaty Body<sup>336</sup>

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# 01

## Application of the Convention

### Article 201<sup>337</sup>

#### The Committee

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Rights and Duties of All Persons Moving from One State to Another and of the States they Leave, Transit or Enter (hereinafter referred to as “the Committee”);  
(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.
2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of destination, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;  
(b) Members shall be elected and shall serve in their personal capacity.
3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the *curricula vitae* of the persons thus nominated.
4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a *quorum*, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.
5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;  
(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

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<sup>336</sup> Provisions for Articles 201-205 and 207 are drawn from the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MW), *supra* note 12. This chapter has benefitted from the suggestions of Sarah Rosengaertner, Guy Goodwin-Gill, Kiran Banerjee and T. Alexander Aleinikoff.

<sup>337</sup> G.A. Res. 45/158, *supra* note 12, art. 72; MW, *supra* note 12, art. 72 (modified by author).

- (c) The members of the Committee shall be eligible for re-election if re-nominated.
6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.
  7. The Committee will request the Secretary-General of the United Nations to provide the necessary staff and facilities for the effective performance of the functions of the Committee.
  8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.
  9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 202<sup>338</sup>**

##### **Reports**

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:
  - (a) Within one year after the entry into force of the Convention for the State Party concerned;
  - (b) Thereafter every five years and whenever the Committee so requests.
2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.
3. The Committee shall decide any further guidelines applicable to the content of the reports.
4. States Parties shall make their reports widely available to the public in their own countries.
5. Agencies, funds and programs of the United Nations, other international organizations and civil society organizations are invited to submit complementary reports on the implementation of the present Convention.

#### **Article 203<sup>339</sup>**

##### **Reporting and Dissemination**

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.
2. The Secretary-General of the United Nations shall be invited, in due time before the opening of each regular session of the Committee, to transmit to the Director-General of the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees, the Director-General of the International Labor Office, the chair of the Global Migration Group and other officials what the Secretary-General deems relevant copies of the reports submitted by States Parties concerned and information

<sup>338</sup> G.A. Res. 45/158, *supra* note 12, art. 73; MW, *supra* note 12, art. 73 (modified by author).

<sup>339</sup> G.A. Res. 45/158, *supra* note 12, art. 74; MW, *supra* note 12, art. 74 (modified by author).

relevant to the consideration of these reports, in order to enable those offices to assist the Committee with the expertise the offices may provide regarding those matters dealt with by the present Convention that fall within their spheres of competence. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.
4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies including nongovernmental organizations and representatives of migrants and refugees to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.
5. The International Organization for Migration, the Office of the United Nations High Commissioner for Refugees, the International Labor Office and other relevant agencies shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.
6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.
7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.
8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Human Rights Council of the United Nations and other relevant organizations.

#### **Article 204<sup>340</sup>**

##### **Rules of Procedure**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. In the event of urgent and pressing circumstances related to the provisions of this Convention—such as those related to the effective provision of international protection—the Secretary-General of the United Nations shall convene an emergency meeting of the Committee and shall instruct it to report its findings to the General Assembly of the United Nations.
5. The meetings of the Committee shall normally be held at the United Nations Headquarters in Geneva.

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<sup>340</sup> G.A. Res. 45/158, *supra* note 12, art. 75; MW, *supra* note 12, art. 75 (modified by author).

**Article 205<sup>341</sup>****Disputes Concerning Compliance**

1. Communications under this article will be received and considered from all States Parties that have not made a declaration opting out of the reporting mechanism for claims that another State Party is not fulfilling its obligations under the present Convention. A State Party to the present Convention may at any time declare under this article that it does not recognize the competence of the Committee to receive and consider such claims on noncompliance and no communication shall be received by the Committee if it concerns a State Party which has made such an opting out declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
  - (a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
  - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
  - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available, effective and sufficient domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;
  - (d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;
  - (e) The Committee shall hold closed meetings when examining communications under the present article;
  - (f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
  - (g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
  - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report to all States Parties, as follows:
    - (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
    - (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue

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<sup>341</sup> G.A. Res. 45/158, *supra* note 12, art. 76; MW, *supra* note 12, art. 76 (modified by author).



between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them;

(iii) If a dispute has not or is not likely to lead to resolution, the Committee can refer that dispute to the UN General Assembly or Security Council or, for States Parties that have accepted compulsory jurisdiction, to the International Court of Justice.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.
3. The provisions of paragraphs 1 and 2 of the present article shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

## **Article 206**

### **Issuance of Advisory Opinions and Authoritative Guidance**

A State Party may at any time call upon the Committee to offer authoritative guidance on the interpretation of the present Convention. The Committee shall also have the capacity to issue general comments and advisory opinions regarding the interpretation of this Convention.

## **Article 207<sup>342</sup>**

### **Individual Communications**

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.
2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.
3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:
  - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

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<sup>342</sup> G.A. Res. 45/158, *supra* note 12, art. 77; MW, *supra* note 12, art. 77 (modified by author).

- (b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.
4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
  5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
  6. The Committee shall hold closed meetings when examining communications under the present article.
  7. The Committee shall forward its views to the State Party concerned and to the individual.
  8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

#### **Article 208<sup>343</sup>**

##### **National implementation and monitoring**

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, at the latest one year after the entry into force of the present Convention or of its ratification or accession, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights (The Paris Principles)<sup>344</sup> and guarantee their functional independence as well as the independence of their personnel.
3. Civil society, including migrants and their representative organizations, shall be invited to participate fully in the monitoring process.
4. The States Parties shall take the necessary measures to ensure that the experts of the

<sup>343</sup> This article draws on valuable suggestions from Diego Acosta inspired by the following authorities: Convention on the Rights of Persons with Disabilities art. 33, Dec. 13, 2006, 2515 U.N.T.S. 3; Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment arts. 17-23, Dec. 18, 2002, 42 I.L.M. 26. This article also reflects reforms proposed by B.S. Chimni for "dialogic deliberation" in *Reforming the International Refugee Regime: A Dialogic Model*, 14 J.O. REFUGEE STUD. 2 151-68 (2001).

<sup>344</sup> G.A. Res. 48/134, National Institutions for the Promotion and Protection of Human Rights (Dec. 20, 1993).

- independent mechanism/s have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
5. The independent mechanism/s shall be granted at a minimum the power:
    - (a) To make recommendations to the relevant authorities with the aim of promoting, protecting and monitoring implementation of the present Convention;
    - (b) To submit proposals and observations concerning existing or draft legislation;
    - (c) To follow up on the effective adoption and implementation of the recommendations by the Committee on the Rights and Duties of All Persons Moving from One State to Another and of the States they Leave, Transit or Enter.
  6. The competent authorities of the State Party concerned shall examine the recommendations of the independent mechanism/s and enter into a dialogue with it on possible implementation measures.
  7. The States Parties to the present Convention undertake to publish and disseminate the annual reports of the national independent mechanisms.

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# 02

## Coordinating and Facilitating International Economic Migration

### Article 209

#### Mobility Visa Clearing House

1. The Committee shall establish a “Mobility Visa Clearing House” web platform accessible by States Parties, corporations, nongovernmental organizations and individuals to facilitate the safe, orderly and regular migration of individuals.<sup>345</sup>
2. All States Parties to the present convention will list the number and kind of labor and investor visas they propose to offer for the following year and provide links to the government websites that provide visa application forms and information regarding application requirements to all and links to online visa application processes through which individuals may apply or employers may petition governments on behalf of prospective employees from abroad.<sup>346</sup>
  - (a) The Committee shall assist state parties that do not have government website with visa application forms and information by requesting technical assistance from fellow state parties that do have such websites.
  - (b) State parties are further encouraged to establish online visa application processes in order to expedite and facilitate safe, orderly and regular migration.
  - (c) State parties that already have online visa application processes are encouraged to consider developing web platforms that enable prospective visa applicants to post

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<sup>345</sup> Report of the Special Representative of the Secretary-General on Migration, U.N. Doc. A/71/728 (Feb. 3, 2017).

<sup>346</sup> *Id.* ¶ 61; Rey Koslowski, *Shifts in Selective Migration Policy Models: A Comparison of Australia, Canada, and the U.S.*, in *HIGH-SKILLED MIGRATION: DRIVERS AND DYNAMICS* (Mathias Czaika eds., forthcoming Feb. 2018). Based on research by Michael Clemens, CENTER FOR GLOBAL DEVELOPMENT, <https://www.cgdev.org/expert/michael-clemens> [<https://perma.cc/ARX2-J8S7>] (last visited Dec. 8, 2017).

“expressions of interest” detailing those individuals’ skills and qualifications and enable employers to view these expressions of interest and contact prospective employees whose work visa petitions they may choose to sponsor.

3. The International Labor Organization will be invited to specify the skills classifications for these visas and assist States Parties in certifying the information needed to meet the classifications.
4. Individuals and sponsoring nongovernmental organizations, corporations, local governments and States Parties can propose candidates for those visas, including the requested documentation.
5. States Parties issuing the visas retain the discretion to accept or reject the credentialing guidelines provided by the International Labor Organization and determining whether a specific individual meets its criteria.
6. At the minimum States Parties will take measures to give preference to refugees and forced migrants in the allocation of at least 10% of all annual labor visas. This shall be met on the basis of States’ participation in the Mobility Visa Clearing House or, prior to implementation, as part of States Parties domestic immigration programs and policies. The award of these preferential labor visas does not subtract from or substitute for any of the protections granted to refugees and forced migrants on the basis of their protected status.
7. In allocating labor migration visas to persons covered in paragraph 6 due consideration will be given to the resettlement and mobility interests of refugees and to the circumstances of their current host communities.

#### **Article 210**

##### **Remittance Subcommittee**

1. The Committee in cooperation with the International Fund for Agricultural Development, the International Organization for Migration and the World Bank will establish a Remittance Subcommittee.<sup>347</sup>
2. The Subcommittee will issue an annual report surveying the facility and costs of remittances from migrants to their designated recipients for the purpose of making recommendations for reducing costs and ensuring reliable delivery of funds.

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# 03

## Coordination and Cooperation on International Protection

#### **Article 211**

##### **Responsibility Sharing**

1. The Office of the United Nations High Commissioner for Refugees will be invited to issue an annual report documenting the number of recognized refugees and forced migrants and their current location of asylum and costs per person of that asylum.

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<sup>347</sup> Rep. of the Special Representative of the Secretary-General on Migration, *supra* note 345, ¶¶ 66-67.

2. The Committee in conjunction with UNHCR will host an annual meeting for all States Parties at which UNHCR will publish the “responsibility shares” of each State Party. At the first such meeting these shares shall be a combined function of 40% of the size of the population, 40% of GDP, 10% of the average number of refugee and forced migrant asylum applications in the previous year, and 10% of the unemployment rate.<sup>348</sup> To avoid excessive shares occasioned by a single factor, such as large population, each factor of the top five States will be capped at the level of the fifth in rank order. In subsequent years, the States Parties by a two-thirds vote of the Committee will set as it sees fit the appropriate proportions of the responsibility sharing formula.
3. Each State Party will pledge the number of resettlement visas for refugees and forced migrants and the amount of funding that it will provide in the coming year, explaining how it meets its responsible share of the global commitment to cooperate to assist refugees and forced migrants. No State Party will meet its responsible share solely by resettlement or solely by funding.
4. UNHCR will be requested to monitor these pledges, reflect upon their collective sufficiency, report on the fulfillment by each State Party of its responsible share of resettlement and funding and publish those assessments in each subsequent annual report on responsibility sharing.
5. States Parties will encourage the formation of bilateral and multilateral capacity-building networks aimed at: (a) facilitating contact and exchange of international protection know-how between States Parties; and (b) refining and promoting best practices for accommodating refugees received via responsibility sharing.<sup>349</sup>

## Article 212

### Comprehensive Global Planning Platform

1. The Committee in cooperation with UNHCR and IOM will establish a “Comprehensive Global Planning Platform” in cooperation with donor States Parties, the World Bank and Foundations.<sup>350</sup>
2. The Comprehensive Global Planning Platform will establish working groups to propose solutions to protracted refugee situations with the aim of facilitating return, local integration or resettlement.
3. The Platform in order to improve the quality of global deliberation and problem solving for migrants and refugees will also establish a research function to report and assess the flow of global visitors, refugees and migrants as well as their impacts on countries of origin, transit and destination.
4. The Platform will liaise with the global private and nongovernmental sector to promote partnerships to better serve the interests of migrants, refugees and States Parties.

## Article 213

### Global Refugee Fund

1. The Committee will establish a voluntary “Global Refugee Fund” inviting the cooperation of UNHCR, IOM, donor States Parties, the World Bank and other relevant agencies.<sup>351</sup>

<sup>348</sup> Based on Commission Proposal for a Regulation of the European Parliament and of the Council Establishing a Crisis Relocation Mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in one of the Member States by a Third Country National or Stateless Person, COM (2015) 450 final (Sept. 9, 2015). Based on European Commission (2015b) COM (2015) 450 final. 2015/0208 (COD). Proposal for a Regulation of the European Parliament and of the Council. Brussels: European Commission.

<sup>349</sup> This subparagraph is a suggestion from Steven Nam.

<sup>350</sup> This planning platform builds on a suggestion from T. Alexander Aleinikoff.

<sup>351</sup> High Level Panel on Humanitarian Financing, Report to the Secretary General: Too Important to Fail—Addressing the Humanitarian Financing Gap (Jan. 2016), <https://reliefweb.int/sites/reliefweb.int/files/resources/%5BHLP%20Report%5D%20Too%20important%20to%20fail-addressing%20the%20humanitarian%20financing%20gap.pdf>, [<https://perma.cc/BKA8-K3P2>].

2. The Global Refugee Fund will be invited to supplement the responsibility sharing mechanism and directed to support:
  - (a) The efforts of States in receiving refugees and displaced persons and in guaranteeing access to consistent, fair and effective asylum procedures;
  - (b) Resettlement programs and actions related to the integration of persons whose stay is of a lasting and stable nature;
  - (c) The provision of emergency measures to address sudden arrivals of large numbers of persons who may be in need of international protection.
3. The Global Refugee Fund shall be governed by a Board composed of two members of the Committee as Chair and Chair designate; one representative each invited from UNHCR, IOM and the World Bank; and the four leading donor States and two private donors in the preceding two years.
4. States Parties can allocate financial pledges made in fulfillment of the "responsibility share" mechanism in article 211 to this Fund.





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